Red Tape Review Commission

Findings And Recommendations

February 2012

Submitted By

Honorable Kim Guadagno, Lieutenant Governor, Chair
Honorable Brian P. Stack, Senator
Honorable Steven V. Oroho, Senator
Honorable John J. Burzichelli, Assemblyman
Honorable Scott T. Rumana, Assemblyman
Honorable Brian D. Levine, Mayor, Township of Franklin
Edward B. Deutsch, Esq.
John Galandak
Tony Monteiro

THE STATE OF NEW JERSEY

February 2012

Dear Governor Christie:

In accordance with Executive Order No. 41, the Red Tape Review Commission submits this report, the delivery of which, furthers our commitment to bringing about fundamental change in State government.

As this report demonstrates, over the last year, the bi-partisan Red Tape Review Commission, in conjunction with the Executive Branch and Legislature, has worked to improve New Jersey's regulatory process, eliminate burdensome red tape, and promote job creation and retention in New Jersey. To such ends, the Red Tape Review Commission held three public hearings in 2011, continued our comprehensive analysis of statutes and regulations, and solicited input and comment from the public in various means, including through a red tape-devoted email account. This Report is the culmination of the year's efforts.

New Jersey continues to make significant progress in improving its regulatory environment, streamlining government, reducing unnecessary burdens, and cutting red tape. Indeed, New Jersey is at the forefront in this respect, and our principles and efforts have served as a nationwide model for other states and the federal government.

But, as demonstrated by the policy recommendations of this Report, work remains. In short, our mission is an on-going one. The Red Tape Review Commission remains committed to its guiding principle of improving New Jersey's regulatory environment. We remain as motivated as ever.

We thank you for the opportunity to serve the people of New Jersey in this important endeavor. And we look forward to again tackling these issues in 2012.

Respectfully,

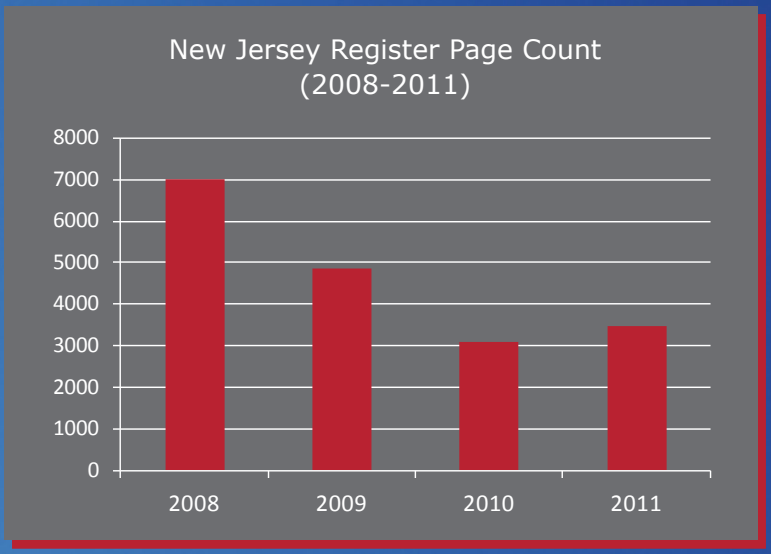
Kim Guadagno
Lt. Governor

Table of Contents

I. Executive Summary 1
II. A Brief History Of The Red Tape Review Commission 2
A. The Genesis of the Red Tape Review 2
B. Executive Orders and Creation of the Red Tape Review Commission 3
C. The Guiding Common Sense Principles of Executive Order #2 4
D. Public Meetings 4
III. Status Of The Red Tape Review Group's 90-Day And 180-Day Recommendations 7
IV. Red Tape Accomplishments In 2011 To Further Compliance With The Common Sense Principles Of Executive Order No. 2 8
A. Seeking and Responding to Pre-Proposal Stakeholder Input 8
i. Stopping Red Tape Before It Starts 8
ii. Increased Pre-Proposal Stakeholder Input 9
B. Ensuring State Regulations Do Not Exceed Federal or Nationwide Standards 9
i. Overtime Regulations 9
ii. Medical Procedures Better Mirror Federal Standards 9
iii. Conforming Electronic Tax Filing to Federal Standards 9
iv. Compliance with the Interstate Insurance Compact 10
v. Streamlined Licensure for Out-of-State Accountants 10
vi. Expanded Reciprocity for Psychoanalysts 10
vii. Treasury's Reliance on Federal Approvals 10
C. Performance-based Outcomes Rather Than Proscription 10
i. Licensed Site Remediation Professionals 11
ii. Redefining Minor Work 11
iii. Providing Medicaid Recipients Choice and Flexibility 11
iv. Division of Consumer Affairs Proposed Regulations 11
v. Streamlining Permitting in the Pinelands 12
vi. More Concise Self-Monitoring of Education 12
vii. Streamlining SNAP 12
viii. Easing Restrictions on Document Delivery 13
ix. Greater Flexibility for Medical Professionals 13
x. Regulating Substance, Not Form 13
D. Deploying Technology 13
i. Occupational Licensure Migrating Online 13
ii. Electronic Submission of Claims for Reimbursement 13
iii. Urban Enterprise Zone Program 14
iv. Electronic Procurement and Bidding 14
v. Posting Required Notices Online 14
vi. Utilizing New Technology at the Juvenile Justice Commission and the Motor Vehicle Commission 14
E. Repeal Outdated, Overreaching, and Common Sense Defying Regulations 15
i. Repeal of Archaic and Anachronistic Rules 15
ii. Repeal of Overreaching Rules 15
iii. Repeal of Rules Defying Common Sense 16

F. Waivers 17
i. Department of Agriculture Issues Waiver to Newark Non-Profit 17
ii. DEP and Consumer Affairs Propose Waiver Regulations 17
iii. DOBI Issues Mortgage Guaranty Insurance Waivers 17
iv. Hardship Waivers from the Division of Addiction Services 17
G. Eliminating the Collection of Irrelevant Data 18
H. Reducing Red Tape for Small Business 19
i. Proposed Amendments to Sludge Quality Regulations 19
ii. Streamlined Permit Spurs Use of Energy Efficient Technology 19
iii. Reducing Inordinate Bonding Requirements 19
iv. Raising the Threshold for Charity Audits 19
v. Administering Training Grants More Efficiently 19
I. Delivering Government Services More Efficiently 20
i. Avoiding Protracted Litigation 20
ii. Reducing Overlapping Jurisdiction of Departments and Agencies 20
iii. Maximizing Performance Outcomes to Reduce Waiting Times 20
iv. Improving Procurement at the Schools Development Authority 21
v. Waiver Pre-Approvals From Treasury 21
vi. Eliminating the Smart Growth Impact Statement 21
vii. Elimination of COAH 21
V. Red Tape Legislative Efforts 22
A. N.J.S.A. § 52:16A-110 – New Jersey's Non-Profit Information Portal 22
B. N.J.S.A. § 30:1-1.2 – Collaboration Between DHS and DCF 22
C. N.J.S.A. § 52:14B-4.10 – Substantial Changes Upon Adoption 22
D. N.J.S.A. § 52:14B-5.1 – Extension of Rule Sunset 23
E. N.J.S.A. § 54:50-38 – Exempting Sales of Certain Property from Bulk Sale Notification Requirements 23
F. N.J.S.A. § 48:2-20 - Requires BPU Orders to be Issued in Writing and Posted on Internet 23
G. N.J.S.A. § 52:14B-26, et seq. – Streamlining Process for and Mandating Review of Business Permits 23
H. N.J.S.A. § 52:14B-21.1- Uniform Small Business Assistance Application 24
I. N.J.S.A. § 52:13H-12 - Expands Organizations that can File Complaints with Council on Local Mandates 24
J. N.J.S.A. § 5:12-1, et seq. – Streamlining Government in Atlantic City 24
K. N.J.S.A. § 19:2-1, et seq. – Eliminating the Separate Presidential Primary Election 24
L. N.J.S.A. § 52:17B-68 – Extending Police Certification 24
M. N.J.S.A.§ 48:4-2.1, et seq. – Prohibiting MVC Bus Inspections on Casino-Owned Property 25
N. N.J.S.A.§ 56:6-2 – Permitting Use of Rebates, Allowances, Concessions, or Benefits for Motor Fuel Purchases on Credit, Debit, or Rewards Cards 25
O. N.J.S.A.§ 56:15-1, et seq. – New Jersey Trade Secrets Acts 25

P. N.J.S.A.§ 4:24-20.1, et seq. – Requiring State, Regional, and Local Authorities, Boards, and Commissions to Establish an Internet Website and Post Information Related to Each Entity's Mission, Finances, Meetings, and Employees 25
Q. N.J.S.A.§ 33:1-75, et seq. – Eliminating Permit Requirement for Home Production of Wine and Beer for Personal Use 25
R. N.J.S.A. § 12:7C-9 – Streamlining MVC's Ability to Process Title Transfer of Abandoned Vessels 25
S. N.J.S.A.§ 26:8-41 – Authorizing Marriage and Civil Union by Proxy for Certain Persons Serving Overseas 26
T. N.J.S.A.§ 52:14-18, et seq. – Reducing the Number of Reports and Publications Printed by the State 26
U. N.J.S.A.§ 52:14B-1, et seq. – Restricting the Use of Regulatory Guidance Documents 26
V. N.J.S.A.§ 48:5A-1, et seq. – Online Submission of Required Documents to BPU 26
W. N.J.S.A.§ 40:55D-1, et seq. – Exempting Certain Collocations of Wireless Equipment From Site Plan Approval 26
X. N.J.S.A.§ 13:1G-1, et seq. – Exempting Amusement Parks and Carnival Amusement Rides from Noise Restrictions Under Limited Conditions 26
VI. Red Tape Recommendations 27
A. Unify and Streamline Bidding and Procurement Procedures 27
B. Expansion of Best Practices and Model Programs 27
C. Repeal / Modify Antiquated, Outdated, Outmoded, and Obsolete Permits 28
i. Smart Moves for Business Program, N.J.A.C. 16:50-1.1, et seq. 28
ii. Certificate of Public Convenience and Necessity 28
iii. Sun Screening Provider Licensure, N.J.S.A. § 39:3-75.1, et seq., N.J.A.C. 13:20-1.1, et seq. 28
iv. Raffle Restrictions on Non-Profits – N.J.A.C. 13:47-6.11(a)(5) 29
v. Eliminate Fees Associated with Clerical Errors 29
D. Modernize Outdated Laws 29
E. Eliminate Hidden Costs of Occupational Licensure 30
i. Letters of Reference 30
ii. Residency and Office Requirements 30
iii. Pawnbrokers 30
iv. Continuing Education 30
1. Ease Restrictions on Continuing Education Providers 30
2. Ease Unnecessary Restrictions to Obtain Continuing Education Credits 30
v. Revise New Jersey Specific Examinations 31
vi. Streamline Reciprocity / Licensure by Credentials for Occupational Licensees 31
vii. Improve Reinstatement Provisions for Occupational Licensees 32
F. Reduce Governmental Overlap 32
i. Auto Body Repair Facility Licensing 32
ii. Emergency Light Permits 32
iii. Multiple Dwelling Inspections 33
G. Deploy Technology to Cut Red Tape 33
i. Require Departments and Agencies to Post Laws and Current and Pending Regulation Online 33
ii. Require Departments to Accept E-mail Comments on Proposed Regulations 33
iii. Create a ListServ to Notify Stakeholders 33
VII. Conclusion 34


New Jersey Register Page Count
(2008-2011)
8000
7000
6000
5000
4000
3000
2000
1000
0
2008
2009
2010
2011

Pursuant to Executive Order No. 41 which established a permanent, bi-partisan Red Tape Review Commission ("RTRC"), the RTRC is required to issue periodic written reports to the Governor. Such periodic reports must make detailed findings and recommendations including an analysis of existing rules, regulations, and legislation that are burdensome to the State's economy, ways to improve the regulatory process of State government, and other areas relevant to procedural reforms. This Report satisfies that requirement by recapping recent successes in cutting red tape to reduce regulatory burdens and streamline government, as well as making recommendations for continuing efforts to improve the State's business environment.

I. Executive Summary

Throughout New Jersey, job creators ranging from small business entrepreneurs to chief executive officers of global corporations have voiced a common refrain: burdensome red tape stunts our ability to grow our business and create jobs. That message has resonated with Governor Christie, Lt. Governor Guadagno, the Legislature, and the members of the RTRC. Indeed, over the last two years, the RTRC has made significant progress in reducing unnecessary, stifling red tape and will continue to explore opportunities to further improve New Jersey's business climate. To such ends, this report discusses the RTRC's red tape reducing efforts for 2011.

This report is comprised of five sections. First, this report provides a brief history of the RTRC, providing an overview of its genesis during the Christie Administration's transition to its creation via Executive Order to its most recent activities, including its three public meetings in 2011.

Second, this report provides a status update on the recommendations made by the Red Tape Review Group – the RTRC's precursor – following its respective 90-day and 180-day reviews of the State's regulatory environment.

Third, this report discusses, in detail, the most significant red tape accomplishments of 2011. Organized around the most salient common sense principles of administrative rulemaking enumerated in Executive Order No. 2, this section demonstrates beyond peradventure the transformative culture change in Trenton. This representative sample of initiatives to eliminate red tape – from using technology to better deploy government services to valuing performance over procedure to repealing outdated and archaic regulations to ensuring that small businesses are not drowning in unnecessary paperwork – is proof that New Jersey's policymakers are not only listening but responding to the concerns of business.

Fourth, this report recaps 2011's most notable legislative efforts to curb red tape, including amendments to the Administrative Procedures Act to extend the sunset period for regulations and instill common sense in the rulemaking process, numerous efforts to streamline government and its interactions with businesses and non-profits, and the elimination of outdated statutory requirements.

Fifth, and finally, this report concludes by presenting numerous recommendations for 2012 and beyond. In addition to continuing to repeal, modify, and modernize antiquated laws and regulations, the RTRC calls on all State entities to identify best practices and model programs, and replicate them where appropriate. In addition, the RTRC must continue its efforts to inject more common sense into the rulemaking process, eliminate hidden costs of licensure, reduce regulatory overlap, and continue to leverage information technology to improve taxpayer interaction with the State. Finally, the RTRC commits itself to addressing problematic bidding and procurement requirements – a reoccurring theme from the RTRC's public meetings over the last two years.

II. A Brief History Of The Red Tape Review Commission

A. The Genesis of the Red Tape Review

Immediately after Governor Christie and Lieutenant Governor Guadagno were elected in November 2009, they organized an informal "red tape" transition team to tackle the impediments to economic growth, job creation, and investment in New Jersey. During the ensuing two months, the team held eighteen roundtable discussions with businesspeople ranging from entrepreneurs to executives from major blue-chip corporations, as well as educators, health care professionals, environmentalists, lawyers, and local government officials. The goal of these discussions was to gather constructive reform ideas from a wide cross-section of New Jersey's regulated community as to our State's poor reputation for business and how to improve it.

The Administration also recognized that the elimination of unworkable, overly-proscriptive, and ill-advised rules and regulations was not mutually exclusive with the purpose of regulation to safeguard societal goods such as clean air, water, and consumer protection. New Jersey consistently ranks among the top states for quality of life, so the dismantling of those safeguards would not help retain or attract businesses and employees in or to the State.

A theme evolved early in the course of these roundtables that the regulated community was missing timeliness, transparency, and predictability in the rule-making process. Moreover, departments seemed to adopt an almost adversarial posture toward consumers. The business community praised states that established the "one-stop shopping" concept for business, where they could interact with government agencies in a simple, streamlined fashion. This implementation of the one-stop shop shaped the Partnership for Action, or the collective efforts of the Business Action Center, the Economic Development Authority ("EDA") and Choose New Jersey. The one-stop shop for business is also evident in the revamped Business Portal at www.NewJerseyBusiness.gov and the Business Action Call Center (866-534-7789).

Another over-arching consensus from these discussions was that New Jersey could better deploy technology to eliminate red tape and to foster a more hospitable climate for business, non-profits, and government agencies alike. Technology is the enemy of bureaucracy. As demonstrated herein, there has been substantial progress in this regard in 2011.

B. Executive Orders and Creation of the Red Tape Review Commission

One of the Administration's first actions was signing a series of Executive Orders to cultivate a new approach to administrative rule-making. Executive Order No. 1 suspended 128 proposed administrative rules and regulations (16 of which were ultimately withdrawn) and prohibited the promulgation of new rules and regulations for 90 days, absent enumerated, compelling rationales. Executive Order No. 2 established "Common Sense Principles" for State agency rule-making designed to make the regulatory process understandable, consistent, and predictable. That order further required a departmental review of existing regulations for compliance with the Common Sense Principles. As a result, six chapters of the Administrative Code were abolished, 99 regulations amended, and 31 regulations repealed.

With Executive Order No. 3, Governor Christie established a bi-partisan Red Tape Review Group, chaired by Lt. Governor Guadagno, to "review all pending and proposed rules and regulations . . . to assess their effects on New Jersey's economy and to determine whether their burdens on business and workers outweigh their intended benefits." The Red Tape Review Group issued two reports that made legislative, regulatory, and policy recommendations: a 90-day report and a 180-day report. See infra Section III. Finally, on September 23, 2010, then-Acting Governor Guadagno signed Executive Order No. 41 to create a permanent, bi-partisan Red Tape Review Commission ("RTRC"). In addition to Lt. Governor Guadagno, other members of the RTRC are: Senator Brian P. Stack, Senator Steven V. Oroho, Assemblyman John J. Burzichelli, Assemblyman Scott T. Rumana, Mayor Brian D. Levine, Edward B. Deutsch, John Galandak, and Tony Monteiro.

The Administration recognizes that sustaining the red tape reform initiative requires the engagement of all stakeholders who participate in the regulatory process. To that end, early in 2010, the Department of State ("DOS") established a red tape review devoted email account: redtape.review@sos.state.nj.us. DOS also created red tape review web pages so that the public could provide input and track red tape developments, news, and events.

The Administration's immediate and decisive action led to an Administration-wide reformation of the State's regulatory culture. This culture change is evidenced, in part, by the drastic reduction in proposed and adopted regulations. For example, in 2008 and 2009, the New Jersey Register – the publication of all statewide proposed and adopted regulations – consisted of 7,020 and 4,846 pages respectively. In 2010, that page count dropped dramatically to 3,086 pages. The 2011 New Jersey Register, though not as lean as the 2010 edition, was still only 3,480 pages.

C. The Guiding Common Sense Principles of Executive Order #2

A core Common Sense Principle was the time of decision rule, defined as the requirement that any permit or approval is governed by the rules in effect at the time of filing (unless specifically provided otherwise in a State or federal law). Applicants will therefore not experience the phenomenon of departments "moving the goalposts," which was cited as problematic by the business community. As yet more evidence of the pervasive red tape culture change, Governor Christie signed legislation on May 2, 2010, effective this past May, that codified "time of decision" at the local government level.

Some other important directives to the Executive branch departments include the following:

- Engage in the "advance notice of rules" by soliciting opinions from stakeholders and knowledgeable sources outside State government before rules are proposed. This consultation should preclude the adoption of needlessly burdensome rules and improve the quality of the rulemaking process;
- Adopt rules for waivers to recognize that strict compliance can, at times, be unduly burdensome or conflicting;
- Detail the justification for every instance when proposed rules exceed federal requirements. When promulgating proposed rules, agencies shall recognize federal pre-emption unless specifically required by State statute or unless stricter regulation is in the special interests of New Jersey; and
- Value performance-based outcomes and compliance over the punitive imposition of penalties for violations that are technical in nature.

The State's most notable efforts to comply with these and other principles are detailed later in this report. See infra Section IV.

D. Public Meetings

To continue outreach to the regulated community and to ensure the transparency of the red tape review process, the Red Tape Review Group held three public meetings in 2010, as did the RTRC in 2011. The format for all six meetings was consistent, with the locations varied among six different counties throughout the State. A theme or subject was announced for each meeting in advance, so that the discussion could be as focused and productive as possible. Invited guests, who were either experts on a topic or representative of a critical point of view, spoke first at each meeting. These guests imparted knowledge to both the red tape panel and the public, and framed the discourse at the meeting. These experts and public participants were invited to raise red tape concerns and problems, but were also encouraged to provide potential solutions.

Since the view for the red tape panels was from the proverbial "10,000 feet," participants were encouraged to cite specific regulations or processes as problematic. Witnesses were limited to several minutes each so that all attendees would have the opportunity to be heard. They were also required to submit comments in writing or via email so that the red tape members and staffers could follow-up. With the caveat that the red tape review panel's function is not to insert itself into administrative adjudications or function as an appellate body, individual problems were introduced by public witnesses. In some cases, an individual problem led to a solution that applied to the more generalized public. For example, at the last meeting of the RTRC in 2011, a real estate agent complained about confusion during the licensing renewal period that resulted in late fees and practice violations. The Department of Banking and Insurance

("DOBI") waived penalties that were leveled at the individual broker and all similarly situated brokers, and refunded $20,100 to 29 realtors who had paid the penalties before the waiver was announced.

As in 2010, this year, the RTRC held three public meetings structured around various red tape themes, one each in Northern, Central, and Southern, New Jersey. [1]

The first meeting of 2011 was on March 2 at New Jersey City University (Jersey City, Hudson County) and focused on licenses and permits – a response to testimony presented at the final public hearing of 2010.

The Coalition of Regulated Professions testified at the March meeting with respect to numerous red tape issues within the Division of Consumer Affairs ("Consumer Affairs") and its professional boards. As a result, the RTRC staff in the Lt. Governor's Office regularly meets with Consumer Affairs' staff and, as demonstrated below, substantial progress has been made with respect to, among other things, on-line applications, the outsourcing of call centers, and reductions in unnecessary compliance tasks. Moreover, and as a result of the testimony received, Senators Oroho and Stack and Assemblymen Burzichelli and Rumana introduced bills to expand reciprocity and cut red tape for out-of-state licensed professionals seeking to practice in New Jersey.

In addition, witnesses from the University of Medicine and Dentistry of New Jersey explained that New Jersey was one of the only states that required a specific licensing regime for rehabilitation counselors. Assemblyman Burzichelli introduced legislation that would create a rehabilitation counselor specialty within the professional counselor license.

The second meeting, held at Thomas Edison State College (Trenton, Mercer County) on July 19, 2011, focused on small businesses and non-profits. As a result of the July 19 public hearing, the RTRC staff within the Lt. Governor's Office organized an informal non-profit taskforce that includes key stakeholders from the sector.[2] The taskforce meets monthly to discuss red tape issues affecting non-profits. At that meeting, the Center for Non-Profits presented a detailed report of red tape issues afflicting the non-profit community. That report, as detailed below, led to reduced red tape concerning requests for proposals ("RFPs") and waivers for non-profits in certain circumstances. Based on testimony received, Senators Oroho and Stack and Assemblymen Burzichelli and Rumana sponsored bills to update some of the raffle and door prize restrictions that are critical to non-profit fund-raising. More specifically, this legislation would: (1) adjust the licensure threshold from $50 (an amount pegged in 1955 and not since adjusted) to $200; (2) empower the Legalized Games of Chance Control Commission to amend the threshold by regulation; (3) eliminate the requirement that door prizes be wholly donated; and (4) permit other games of chance to be conducted at the event by the non-profit.

At the July hearing, one small business person complained about the seemingly Byzantine contract and sub-contracting processes across the various state and local entities, and the confusion that exists at all levels concerning set asides for women and minority-owned businesses. A representative from the Marine Trades Association told the RTRC that boating oversight is scattered throughout several State departments and suggested that these functions could efficiently be consolidated under one roof.

1 The public meetings in 2010 were: March 2, 2010 at Rowan University (Glassboro, Gloucester County), focused on the Administrative Procedure Act; March 9, 2010 at Brookdale Community College, (Middletown, Monmouth County) focused on unfunded mandates; and March 23, 2010 at Montclair State University (Montclair, Essex County) focused on Common Sense Principles for rulemaking.

2 This informal task force includes, among others, representatives from the Lt. Governor's Office, the Non Profit Center, the Pro Bono Partnership, the American Cancer Society, the New Jersey State Association of Jewish Federations, the New Jersey Association of Community Providers, Inc., the New Jersey Association of Mental Health Providers, and the New Jersey Alliance for Children, Youth, and Families.

The third and final RTRC public hearing was held September 21, 2011, at Richard Stockton State College (Atlantic City, Atlantic County).[3] This meeting addressed issues of general concern.

The RTRC heard about the Business Law section of the New Jersey Bar Association's efforts to encourage the passage of the Revised Uniform Limited Liability Act ("RULLCA") that was introduced in the Senate in May 2011. As developed by the National Conference of Commissioners on Uniform State Laws, RULLCA would cure pitfalls afflicting small business entrepreneurs seeking to form a business in New Jersey, promote greater uniformity with sister states who have, by and large, adopted RULLCA, and address other drawbacks in New Jersey's current framework by simplifying formation, and streamlining domestication and conversion. This "second generation" LLC statute will make business organization in the State easier, an important development in light of the fact that more New Jersey LLCs are formed than corporations and limited partnerships combined. Assemblyman Burzichelli and Assemblyman Rumana subsequently introduced the RULLCA in the Assembly, and Senator Oroho joined as a primary sponsor of the Senate version.

The RTRC also heard complaints about stormwater management reviews that are duplicative at the municipal, county, and state levels and sewer determinations by DEP that have led to disputes with county and municipal officials and confusion with landowners who may now be within a sewer service area, but could face withdrawal from future service areas. Planning officials from Atlantic County Regional Planning and Development suggested that CAFRA and the Pinelands Commission sign a memorandum of understanding agreeing to one simultaneous review when their districts overlap. Those officials also recommended that local governments should receive credit for mitigation from open space acquisitions, and there was widespread agreement that the Licensed Site Remediation Program ("LSRP") should be expanded.

Voicing a recurring theme, an official from the Atlantic County Division of Purchasing recommended changes to the procurement process wherein: bids could be emailed; counties could award multiple vendors from one bid; the State, county, municipal, and schools could adopt uniform purchasing laws to simplify the process for vendors; and the pay-to-play limit should equal the bid threshold.

3 The RTRC extends its sincere thanks and appreciation to New Jersey City University, Thomas Edison State College, and Richard Stockton College, all of whom graciously provided their facilities for our public meetings.

III. Status Of The Red Tape Review Group's 90-Day And 180-Day Recommendations

The following chart summarizes the status of the Red Tape Review Group's recommendations made in the 90-day and 180-day reports.

Recommendations	Completed	On-Going	Withdrawn
Legislative			
Reform the Administrative Procedure Act		X	
Provide new and expanded powers to combat unfunded mandates	X		
Eliminate unnecessary boards, tasks forces, commissions and councils	X		
Improve and streamline affordable housing policy		X	
Reform Civil Service		X	
Examine unfunded educational mandates		X	
Regulatory			
Implementation of Common Sense Principles		X	
Rule rescissions and modifications pursuant to 90-day review	X		
Rule rescissions and modifications pursuant to 180-day review		X	
Boiler tech regulations		X	
Delays in obtaining riparian instruments		X	
Milk coupons		X	
Sub-metering of utilities	X		
E141 forms			X
Public access rules	X		
Exotic species rules			X
Cigarette sales tax		X	
Wine tasting requirements	X		
Cosmetology issues		X	
Counselor licensing	X		
Wildwood parking / CAFRA	X		
Policy			
Regulatory culture change / customer service oriented mentality		X	
Creation of Partnership for Action	X		
Improve information technology		X	
Improve and reorganize state planning functions	X		
Establish permanent RTRC	X		
Rescind Executive Orders that impede economic development goals		X	

IV. Red Tape Accomplishments In 2011 To Further Compliance With The Common Sense Principles Of Executive Order No. 2

The following section summarizes noteworthy red tape accomplishments in 2011, organized in accordance with the most salient Common Sense Principles of Executive Order No. 2. Although fairly detailed, this summary is not intended – nor could it be – an exhaustive recap of all Administration-wide efforts to reduce red tape in 2011.

A. Seeking and Responding to Pre-Proposal Stakeholder Input

Executive Order No. 2 requires State rulemaking bodies to engage in the "advance notice of rules" by soliciting, in advance of any rulemaking, the advice and views of stakeholders and knowledgeable persons from outside of State government to receive insight on proposed rules and to prevent unworkable, overly-proscriptive, or ill-advised rules from being adopted. A few examples are representative of the State's efforts in this regard.

i. Stopping Red Tape Before It Starts

In June, Consumer Affairs published a Notice of Pre-Proposal concerning a potential amendment to N.J.A.C. 13:48-11.2, which governs the disclosures of charitable organizations in their solicitations. See 43 N.J.R. 1322(a). Consumer Affairs sought feedback on a proposal that would have required charities that receive more than $250,000 in contributions annually to include on any solicitation a means for donors to direct their contributions to specific programs. Under current rules, donors may direct their contributions if they so choose. In response to negative feedback, including testimony presented to the RTRC concerning the administrative burdens it would create, Consumer Affairs opted to not go forth with the amendment. See 43 N.J.R. 2521(b). In short, the system worked, and the creation of needless red tape was avoided.

> "The Red Tape Review Commission, under the leadership of Lt. Governor Kim Guadagno, has shown continued, vibrant, and proactive support for helping nonprofits to reduce the needless red tape that they have confronted in the past."
>
> – Christine Duffy, Pro Bono Partnership

ii. Increased Pre-Proposal Stakeholder Input

Many departments and agencies now routinely engage the regulated community in advance of proposing new or amended regulations to preclude the creation of burdensome rules and to be alerted to possible unintended consequences. The Department of Environmental Protection's ("DEP") pre-proposal outreach is particularly noteworthy as it was cited as critical to uncovering thorny issues in complex rule proposals concerning regulations governing LSRPs, 43 N.J.R. 1935(a), public access to tidal waters and shorelines, 43 N.J.R. 772(a), and implementation of the Electronic Waste Management Act, 43 N.J.R. 1935(a). DEP's website even has pages devoted to "Stakeholder Workgroup and Public Meeting Schedule" and "Opportunities for Public Comment/Participation Prior to Formal Rulemaking" – efforts toward seeking feedback that can be easily replicated.

The pre-proposal outreach efforts of DOBI are also notable. In implementing the regulatory guidelines required under New Jersey's recently enacted captive insurance law, DOBI met with more than three dozen individuals who worked for or represented captive insurers to elicit input on industry best practices. These stakeholder meetings resulted in substantive changes in the proposal regulations, demonstrating, again, that the process worked.

B. Ensuring State Regulations Do Not Exceed Federal or Nationwide Standards

Executive Order No. 2 requires State agencies to not exceed the requirements of federal law except when required by State statute or where exceeding federal requirements is necessary to achieve a New Jersey specific public policy goal. A corollary of that principle is for New Jersey to adhere to nationally accepted standards, where appropriate. A few examples follow.

i. Overtime Regulations

The Department of Labor and Workforce Development ("LWD") repealed regulations regarding exemptions from overtime for bona fide executive, administrative, professional, and outside sales employees, and replaced those rules with analogous Federal overtime regulations. See N.J.A.C. 12:56-6.1; N.J.A.C. 12:56-7; 43 N.J.R. 2352(a). The byzantine nature of New Jersey's old rule was previously noted by the RTRC. By adopting Federal requirements, LWD, according to one commenter, made New Jersey "more attractive and acceptable to new investment by multi-state, national and even global enterprises." 43 N.J.R. 2352(a).

ii. Medical Procedures Better Mirror Federal Standards

The State Board of Medical Examiners took action to align New Jersey standards with those of the federal government and other states. For example, N.J.A.C. 13:35-4A.6(c)(2) previously required pre-surgical exams to be conducted 14 days before a procedure. This rule was amended to 30 days to better comport with regulations in other states. N.J.A.C. 13:35-5.1, which addresses prescriptions for contact lenses after a contact lens fitting, was amended to comport with the Federal Fairness to Contact Lens Consumer Act. Finally, N.J.A.C. 13:35-7.6 was amended to be consistent with changes in Federal law concerning multiple prescriptions for Schedule II controlled dangerous substances.

iii. Conforming Electronic Tax Filing to Federal Standards

The Department of the Treasury ("Treasury") adopted a new regulation that requires tax preparers who prepare or file more than 11 tax returns to file those electronically. N.J.A.C. 18:35-6.4(f). This rule harmonizes with federal law.

iv. Compliance with the Interstate Insurance Compact

The Interstate Insurance Compact ("ICC") is a modernization initiative to enhance the efficiency, effectiveness, and uniformity of insurance product filing, review, and approval. The ICC established a multistate public entity, the Interstate Insurance Product Regulation Commission ("IIPRC") to serve as an instrumentality of the 41 member states, including New Jersey. In 2007, the IIPRC adopted standards for accelerated death benefits in life insurance policies. DOBI proposed regulatory amendments to align its accelerated death benefits rules with IIPRC's standards. 43 N.J.R. 3119(a). Thus, insurers will comply with only one set of guidelines whether they file directly with DOBI or via the ICC.

v. Streamlined Licensure for Out-of-State Accountants

The Board of Accountancy amended its regulations to permit individuals licensed in other states to practice in New Jersey without a license if: (1) they hold a license as a certified public accountant ("CPA") from any state that the National Association of State Boards of Accountancy ("NASBA") has verified to be in substantial equivalence with the CPA requirements of the American Institute of Certified Public Accountants ("AICPA")/NASBA Uniform Accountancy Act; or (2) other criteria for NASBA verification. See N.J.A.C. 13:29, et seq.

vi. Expanded Reciprocity for Psychoanalysts

Within the psychoanalyst community, two nationally recognized but competing camps set forth professional standards that differ on, among other things, the frequency of personal psychoanalytic training during education. The Board of Psychoanalysts has proposed a regulation that would grant reciprocity for licensees licensed in another state with requirements as stringent in New Jersey regardless of which camp that state adheres to. See 43 N.J.R. 1498(a).

vii. Treasury's Reliance on Federal Approvals

In partnership with the Division of Purchase and Property and the Office of Homeland Security, the Office of Management and Budget drafted a certification for use by agencies that streamlines procurements made possible solely by federal funds. This will eliminate an extensive and separate State review process for procurements that have received federal clearance.

C. Performance-based Outcomes Rather Than Proscription

Another Common Sense Principle is for agencies to cultivate an approach to regulations that values performance-based outcomes and compliance, over the punitive imposition of penalties for technical violations that do not result in negative impacts to the public health, safety, or environment. In short, State departments and agencies are to regulate substance, not form. A few examples prove the point.

i. Licensed Site Remediation Professionals

The Administration has acted swiftly to implement the Site Remediation Reform Act governing LSRPs. See, e.g., 43 N.J.R. 2581(b) (re-adoption of interim rules); 43 N.J.R. 1935(a) (proposed final rules). Under the old paradigm, a developer was required to await approval from DEP prior to implementing each phase of remediation. Of course, while the developer awaited DEP approval, the contamination remained unaddressed and the site undeveloped. Under the new paradigm, LSRPs can make decisions on remediation without prior approval from DEP, thereby eliminating waiting time and its associated costs. Moreover, DEP – based on pre-proposal stakeholder input – proposed to replace unduly prescriptive technical requirements with performance-based requirements that allow more flexibility in addressing contamination and empower LSRPs to use their professional judgment.

ii. Redefining Minor Work

The Division of Codes and Standards proposed amendments to the Uniform Construction Code that significantly broaden the types of work categorized as "minor work," including work that typically occurs on a change in tenancy in a retail, office, warehouse, or industrial space. See 43 N.J.R. 2409(a). While a contractor still must apply for a permit, the work could proceed before the permit is issued and without waiting for the progress of work inspections, thus facilitating the turnaround for rental spaces. The Department of Community Affairs ("DCA") stated that the amendment will "reduce or eliminate the professional services that a small business might otherwise have needed." Id. Moreover, consistent with the Common Sense Principle of seeking input from impacted stakeholders, following rule proposal, DCA convened a working group consisting of code officials, labor, and the real estate community to assist in further revisions to these pending regulatory amendments.

iii. Providing Medicaid Recipients Choice and Flexibility

The Department of Human Services ("DHS"), Division of Disability Services sought to test a cash model service delivery system in the Personal Assistance Services Program, under which the consumer is given options for the use of their monthly "allowance" and, in consultation with designated county agencies, develops a personalized "cash management plan." See 43 N.J.R. 2551(a). Under the old system, DHS, along with county agencies, controlled how the funds were spent. But under the cash model, the individual consumer is empowered to determine the services to be provided and who will provide them. In short, the cash model is about greater consumer choice, control, and flexibility.

iv. Division of Consumer Affairs Proposed Regulations

To implement Executive Order No. 2 and encourage performance based, rather than punitive outcomes, Consumer Affairs proposed rules to, in its discretion and in appropriate circumstances, pursue measures to encourage compliance with regulations, as opposed to discipline and penalties. See 43 N.J.R. 1816(b). Factors are: good faith effort to comply; impact of violation on product or service provided; impact of violation on consumer; impact of violation on pubic health, safety, and welfare; whether violation was first time violation or same as or similar to past violation; whether violation is isolated paperwork or procedural regulatory noncompliance; and the seriousness of the violation. The proposed regulation provides, by way of example, potential alternatives to punishment and sanctions, such as: a letter of admonition or other non-public warning; suspending obligation to pay fines subject to continuing compliance; agreement of violator to seek medical or professional treatment; agreement of violator to submit to medical or diagnostic testing; agreement of violator

to submit to assessment of skills; corrective training; participation in consumer outreach program; or contribution to the consumer fraud education fund.

v. Streamlining Permitting in the Pinelands

Pinelands Commission regulations provide a list of events that "shall not be considered development" and exempts them from the development application process. N.J.A.C. 7:50-4.1. The Commission now seeks to expand that list to include: (1) "[t]he installation of an accessory solar energy facility on any existing structure or impervious surface;" and (2) "[t]he installation of a local communications facilities antenna on an existing communications or other suitable structure, provided such antenna is not inconsistent with any comprehensive plan for local communications facilities . . . . " 43 N.J.R. 928(a). This amendment will hasten the local approval process and substantially reduce costs for businesses, especially small businesses.

vi. More Concise Self-Monitoring of Education

The Governor's Education Transformation Task Force, following in the foot steps of the RTRC, held public meetings and reviewed statutes and regulations to recommend a new system of accountability with more autonomy for schools. As a consequence, the Department of Education ("DOE") proposed regulations to revise the implementation of the monitoring and evaluation system for public school districts and county special services school districts – the New Jersey Quality Single Accountability Continuum ("QSAC"). The proposed revisions, which, among other things, incorporate the annual Statement of Assurance into the evaluation tool, thereby saving districts and Department staff time, create a more concise self-evaluation and a less cumbersome process for school districts.

By consolidating and reducing the number of requirements, the proposed amendments will decrease costs related to time in completing the self-evaluation portion of the QSAC monitoring process. Additionally, DOE anticipates a decrease in the costs for its staff because of the more focused and concise evaluation tool and the incorporation of the annual Statement of Assurance. The Red Tape Review Group heard recommendations to amend QSAC during the transition meetings and at the public meeting at Brookdale Community College.

vii. Streamlining SNAP

The Department of Children and Families ("DCF") proposed regulatory amendments affecting the Supplemental Nutrition Assistance Program ("SNAP"). 43 N.J.R. 2214(a). DCF seeks to amend its regulations to provide that all householders are not required to sit for a face-to-face interview prior to certifications and re-certifications. Similarly, DCF proposes to allow for home visits on a case-by-case basis if it would create a financial hardship for a household to send a representative for an in-office or telephone interviews, and to extend the lengths for various certifications from six to twelve months.

viii. Easing Restrictions on Document Delivery

Consumer Affairs proposed a regulatory amendment to N.J.A.C. 13:45A-5.1(a)(2) concerning furniture delivery that permits the seller to "provide" required written notice to the buyer by any means (not only mail) . 43 N.J.R. 1130(a).

Similarly, the State Board of Medical Examiners also relaxed their regulations to provide that delivery of notice by any means that indicates proof, not merely certified letter, is appropriate. See, e.g., N.J.A.C. 13:35-6.15; N.J.A.C. 13:35-6.22

ix. Greater Flexibility for Medical Professionals

A number of regulations were amended to substantially free physicians from certain tasks that other medical professionals could perform. For example, pursuant to N.J.A.C. 13:35-2B.4, physician assistants can now prescribe controlled dangerous substances. Physicians may now direct medical assistants to administer intradermal injections. Other rule amendments now permit physicians to delegate physical modalities to licensed occupational therapists, N.J.A.C. 13:44K-5.4, and to delegate tasks to radiologic technologists and nuclear medicine technicians, N.J.A.C. 13:35-6.20. These amendments all increase the number of trained professionals able to provide services to consumers, thereby decreasing consumer wait time to obtain treatment and increasing the number of clients professionals may treat.

Similarly, Consumer Affairs published a pre-proposal that would permit pharmacists and pharmacy technicians to perform certain functions at locations not permitted as New Jersey pharmacies. The new rule would provide pharmacies with greater flexibility managing prescription processing operations and ensure that if these functions are performed remotely, qualified individuals are in charge. At the very least, Consumer Affairs' solicitation of pre-proposal stakeholder input is consistent with the commands of Executive Order No. 2.

x. Regulating Substance, Not Form

Consumer Affairs proposed regulations that provided sample forms for estimates, orders for service, bills of lading, and warehouse receipts for warehousemen and movers. However, due to feedback during notice and comment, Consumer Affairs recanted and instead regulated the content of the form – not the form itself.

D. Deploying Technology

Executive Order No. 2 directs State agencies to leverage information systems and other technologies to improve efficiency and process. Although more remains to be done, a few examples of progress are worth highlighting.

i. Occupational Licensure Migrating Online

Spurred by testimony at the March RTRC meeting from the Coalition of Regulated Professionals, Consumer Affairs has begun transforming its once paper-driven licensure and re-licensure procedures to an electronic system. Currently, all license renewals for professional boards within Consumer Affairs are online, as are all license searches. With respect to initial licensure, pharmacy technicians were the first two licenses to go completely online. Remaining occupational licenses are slated to follow, including pharmacists, nurses, and cosmetologists.

ii. Electronic Submission of Claims for Reimbursement

DHS, Division of Medical Assistance and Health Services proposed amending its regulations to require the electronic submission of claims for reimbursement and to require the payment of claims through direct deposit rather than paper check. See 43 N.J.R. 1129(a). The use of electronic claims and electronic funds transfer will reduce the time from claim to payment for providers by up to 20 days and save the program $1.2 million annually. Id.

iii. Urban Enterprise Zone Program

The Urban Enterprise Zone program at DCA is completely online, from the initial application to tax payments and reports once the business is established. Under the old, paper-based process, applicants were required to submit copies of their documents of formation and business registration in addition to the application. Now business certification is automatic and applicants need to only complete their applications online. The reduction in red tape equals a reduction in paper forms, postage and storage costs, transcription errors, and turnaround times.

iv. Electronic Procurement and Bidding

At the July public meeting, the RTRC learned of a non-profit providing special education, residential, and emergency shelter services that spent more than $2,000 on copying costs alone to respond to a single RFP from DCF that required 11 hard copies and one electronic copy on DVD. The binding of the hard copies was also proscribed (e.g., no loose leaf binders). Prompted by that testimony, DCF will be changing its bidding submission to electronic submission department-wide.

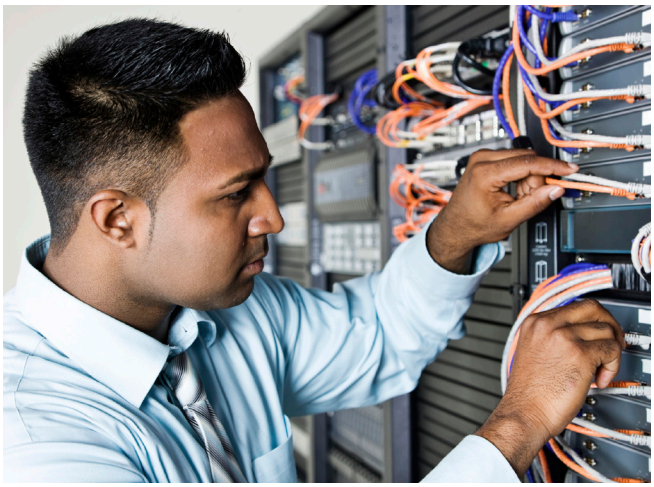
v. Posting Required Notices Online

LWD adopted new regulations providing that requirements for the conspicuous posting in the workplace of information regarding wages, benefits, taxes, and other contributions, are satisfied by: (1) posting the information to "an internet site or intranet site for exclusive use by its employees to which all employees have access;" or (2) sending the notification to employees via email. N.J.A.C. 12:2-1.3(c).

vi. Utilizing New Technology at the Juvenile Justice Commission and the Motor Vehicle Commission

Deploying technology is not, however, limited to improved use of information technology. For example, the Juvenile Justice Commission proposed amending N.J.A.C. 13:95-5.11, governing urinalysis procedures, to utilize improved technology in that field. Specifically, under the proposed amendments, the use of test labs will be replaced with new technology for on-site urinalysis test kits. The test kits (which are as accurate as lab testing) will reduce waiting time for results from weeks to minutes and eliminate the need for storage and chain of evidence procedures. Test kits will reduce the cost of urinalysis by 65 percent. 43 N.J.R. 3123(a).

Another example is recent regulatory amendments from the Motor Vehicle Commission ("MVC"). Specifically, MVC proposed numerous regulations that provided that a variety of school bus devices should be compliant with manufacturer instructions, not with MVC specifications, thereby permitting devices to be optimized with emerging technologies. See 43 N.J.R. 1831(a). MVC also proposed amending N.J.A.C. 13:21-7.4 to permit online road test appointments, and N.J.A.C. 13:20-30.14 to permit electronic submission of fingerprints.



E. Repeal Outdated, Overreaching, and Common Sense Defying Regulations

In compliance with Executive Order No. 2's directive to continuously engage in a self-evaluation of their rules, regulations, and policies, departments and agencies are repealing rules, regulations, and policies that are archaic and anachronistic, overreach, and/or defy common sense, as demonstrated below.

i. Repeal of Archaic and Anachronistic Rules

- Until the Red Tape Review Group became involved, New Jersey was the last state to prohibit sub-metering of utilities in rental housing – i.e., the monitoring, measuring, and charging of utility costs to tenants based on actual use of utilities consumed by each tenant, as opposed to the antiquated practice of estimating tenant consumption. However, the Board of Public Utilities ("BPU") now allows sub-metering of water in newly constructed residential apartment buildings, as well as certain, repurposed buildings;
- MVC proposed repealing a regulation prohibiting farm vehicles exceeding 12 feet in width or 60 feet in length from operation on Sundays and holidays. Enacted in the 1960s, this rule sought to comply with blue laws and ensure that utility poles were not knocked down when nobody was available to fix them. 43 N.J.R. 1852(a); and
- DOBI repealed N.J.A.C. 11:2-41, regarding the Windstorm Market Assistance Program, which has not been operational for several years.

ii. Repeal of Overreaching Rules

- Based on feedback from approved food vendors of the Women, Infants, and Children ("WIC") program and RTRC involvement, the Department of Health and Senior Services ("DHSS") is no longer enforcing an antiquated policy, untethered to federal requirements, that prohibited vendors from issuing WIC recipients a receipt. This policy change saved supermarkets and small food retailers substantial expense for technology upgrades;
- Under current regulations, an applicant for licensure as a professional or associate counselor must have a master's or doctorate degree in counseling from a regionally accredited institution that requires specific areas of instruction enumerated in statute and regulation. However, adopted rules, set to take effect Oct. 5, 2012, sought to amend the licensure and instead required putative counselors to have obtained a degree from an institution accredited at the time of their graduation by the Council on the Accreditation of Counseling and Related Programs ("CACREP"). The Red Tape Review Group criticized the amendment, as having negative impacts on New Jersey colleges and universities (due to the costs of obtaining and maintaining CACREP accreditation), forcing some to close their counseling programs – thus leading to a shortage of licensed counselors able to serve New Jersey residents. In light of those concerns, the State Board of Marriage and Family Therapy Examiners deleted the mandatory CACREP accreditation requirement that would otherwise have become effective. See generally 43 N.J.R. 1414(a); 43 N.J.R. 3191(a);

- MVC proposed amending N.J.A.C. 13:20-49B.6 and N.J.A.C. 13:20-50A.6(d) to allow school bus grilles to be black (formerly only chrome, silver, gray, or "National School Bus Yellow" were permitted); and
- MVC proposed numerous regulatory amendments to allow more flexibility on color, size, and visibility of letters on buses.

iii. Repeal of Rules Defying Common Sense

- MVC proposed amending N.J.A.C. 13:20-30.5 to permit a school bus that has been marked "out of service" to be driven to reinspection after repairs have been made, so long as no passengers are transported (thereby allowing reinspection to occur without the need for a tow truck);
- MVC proposed repealing N.J.A.C. 13:20-30.8 to change the required inspection of school buses from a mileage-based system to every three months, or as set forth in manufacturer's recommended maintenance schedule, whichever occurs first, a change that has significant impacts in rural school districts;
- Following recommendations made by the Red Tape Review Group, DEP made "common sense" changes to Public Access Rules by exempting from the rules any property with Homeland Security concerns, waterfront dredging activities, and development at existing port facilities. Through the formal regulatory process, DEP proposed to amend the Public Access rules to maintain existing access and engender cooperation from municipalities to create town-specific access plans;
- Treasury amended N.J.A.C. 17:12-2.6, which concerns the bidding process, to provide for one-day postponements for inclement weather or similar problems that affect transportation, and to clarify the Division's prerogative to grant a brief extension due to a documentable, transport-related adverse condition;
- Treasury proposed amending N.J.A.C. 17:12-2.1.2, which previously required a bidder to be registered with the Division of Revenue prior to its bid. That has been modified to make the requirement a pre-contract requirement;
- Treasury revised N.J.A.C. 17:12-2.1(a) to establish a seven-day period (previously ten days) as the minimum number of business days between initial public notice of a bidding opportunity and the deadline for receipt of proposals, thus allowing for more timely procurements when expediency is required; and
- Treasury amended N.J.A.C. 17:12-2.4 and 2.5 to allow for use of more types of bid security and performance security, respectively, to increase bidder flexibility.

F. Waivers

Executive Order No. 2 stresses the importance of waivers. Recognizing that rules can be conflicting or unduly burdensome and that strict compliance will, in certain circumstances, lead to perverse results and enforcement, departments were encouraged to utilize waivers to a greater extent. A few examples are worth mentioning.

i. Department of Agriculture Issues Waiver to Newark Non-Profit

At the July public hearing, the RTRC learned of a Newark non-profit that, to provide federally subsidized meals to low-income children as part of a summer program, filled out hard-copy forms for each of the approximately 2,000 children in the program. Each form required substantial information, including household income and membership. In addition to the substantial staff time required in completing hard copy forms, the non-profit paid more than $1,500 in copying expenses. Based on the RTRC's involvement, the Department of Agriculture issued a waiver that requires the submission of only the child's name and address via an Excel spreadsheet going forward.

ii. DEP and Consumer Affairs Propose Waiver Regulations

DEP and Consumer Affairs have both proposed agency-wide waiver regulations. To qualify for consideration for a DEP waiver under the proposed rule, DEP must determine that the requirement sought to be waived conflicts with another State or Federal rule, application of the rule under the circumstances would be unduly burdensome, there would be a net environmental benefit achieved through the waiver, or there is a public emergency that must be addressed. See 43 N.J.R. 473(a).

Consumer Affairs' proposal seeks to waive specific regulatory requirements for reasons of undue hardship. See 43 N.J.R. 1816(b). A waiver would be permissible when strict compliance would lead to an unfair, burdensome, or incongruous result, conflict with the rules of another agency, or result in undue hardship, economic or otherwise.

iii. DOBI Issues Mortgage Guaranty Insurance Waivers

With N.J.A.C. 11:2-27.5, DOBI established a process through which mortgage guaranty insurers may apply for a waiver of the otherwise mandated liability to policyholder surplus ratio requirement. Without the ability to qualify for such a waiver, adequately capitalized mortgage guaranty insurers would have been forced to stop writing mortgage guaranty insurance. After the law permitting such waivers was enacted in late 2010, DOBI advised mortgage guaranty insurers via Bulletin that they could begin to apply for waivers prior to the date on which the law provided that the issuance and waivers could commence. Doing so expedited the delivery of the relief to the housing and mortgage refinance markets the law was enacted to provide.

iv. Hardship Waivers from the Division of Addiction Services

Prompted by the transfer of the Division of Addiction Services from DHSS to DHS, DHS proposed new rules concerning the licensure of residential treatment facilities for substance use disorders. The proposal includes a waiver provision for clear economic hardship. Rules may be modified in this circumstance, provided the waiver does not detract from program quality or jeopardize public health, safety, or welfare.

G. Eliminating the Collection of Irrelevant Data

In compliance with Executive Order No. 2, many departments and agencies have amended rules to require the submission of only relevant information, thereby imposing less burdens on businesses and the regulated community. For example:

- Based on an inquiry made to the RTRC-dedicated email account, MVC will be substantially decreasing the documentation required to obtain a Corp Code which allows a business to title and register a vehicle or vehicles in the name of a business instead of an individual. To expedite the process, MVC will limit the required documentation to only: the primary 6 point identification document; social security number; the business name and location; and a tax ID number, rather than notarized documents and other tax and legal information;
- DOBI repealed rules that required advertisements of policies to be filed with DOBI prior to use and that authorized DOBI to disapprove such advertisements, see N.J.A.C. 11:4-53.7(a) & (c) (actuarial services), N.J.A.C. 11:4-34.20 (long-term care insurance);
- DOBI repealed N.J.A.C. 11:4-29 which required insurers to annually submit data concerning premiums on personal homeowners, tenant, and/or condominium coverage. A commenter applauded DOBI for "proactively seeking the repeal of antiquated regulations" and for "eliminating administrative burdens which no longer offer tangible benefits to policyholders or insurers." 43. N.J.R. 1352(a);
- DOBI repealed N.J.A.C. 11:4-31 which required insurers to annually submit data to enable the publishing of an annual Term Life Insurance Comparison Guide;
- DOBI adopted regulatory amendments to reduce the data required to be reported in excess profits reports to strictly essential information. N.J.A.C. 11:3-20.4;
- DOBI repealed N.J.A.C. 11:25-2.6 which required property/casualty and life insurers to report semi-annually about utilization of the insurer's internal appeals process for consumers seeking review of disputed claims;
- DOBI deleted a requirement that health insurance carriers offering a product with a utilization management component, but no network, provide certification information by filing an "HCQA Registration Form" because this information is provided in another application submitted by such carriers. See N.J.A.C. 11:24A-2.2;
- DOBI repealed N.J.A.C. 11:3-16.12, which required all private passenger auto insurers to file individually, and also as members of an insurance holding company group, semi-annual reports of their total statewide written exposure and the primary classification distribution of policies written;
- The Real Estate Commission revised their regulations regarding appeals by reducing the number of copies to be filed from 15 to 2, see N.J.A.C. 11:5-11.10; and
- The State Board of Mortuary Science amended N.J.A.C. 13:36-5.1 to eliminate the requirement that a licensee retained as the manager of more than one registered mortuary operating in the same physical location obtain a duplicate license for posting in each establishment.

H. Reducing Red Tape for Small Business

The burdens imposed by red tape impact all taxpayers – individuals and businesses alike. However, they are often most acutely felt by small businesses that often lack the staff and expertise to navigate the labyrinth of government. Although many of the above successes impact small businesses significantly, a few others deserve mention.

i. Proposed Amendments to Sludge Quality Regulations

DEP amended its regulations governing sludge quality to extend the domestic analytical exemption to small generators with a permitted wastewater flow of 20,000 gallons or less per day. N.J.A.C. 7:14C-1.13A. The State's 114 small domestic treatment works will no longer be required to conduct an annual monitoring analysis and report. These small businesses will each save $500 per year – not including the time saved – by not submitting the report. The amendment also benefits DEP because a disproportionate amount of staff time is spent resolving reporting issues associated with such small treatment works – time that can be focused on higher priority regulatory matters.

ii. Streamlined Permit Spurs Use of Energy Efficient Technology

DEP developed a new general permit to make it faster for small and moderate-size facilities to tap into the cogeneration market. This general permit covers new combined heat and power facilities up to about five megawatts. This permit will make it easier for a wide range of facilities such as small- to moderate-size manufacturers, office complexes, apartment complexes, hospitals, and schools to turn energy used for heating into electricity, while helping New Jersey meet its goals for cleaner and more diverse energy generation.

iii. Reducing Inordinate Bonding Requirements

New Jersey Transit proposed a regulatory amendment to N.J.A.C. 16:72-2.2 that changed the amount of a required bid bond or deposit from 50 percent to 10 percent. 43 N.J.R. 1322(b).

iv. Raising the Threshold for Charity Audits

Working with RTRC staff, Consumer Affairs' Charities Registration Unit doubled the mandatory independent audit threshold for non-profits from $250,000 to $500,000. N.J.A.C. 13:48-5.3(c). According to the Center for Non-Profits, this change saves each affected organization an average of $7,000 annually and will collectively save more than $10 million for New Jersey's non-profit community.

v. Administering Training Grants More Efficiently

LWD provides customized training grants for businesses to upgrade the skills of their employees. Through this Workforce Development Partnership, companies with 250 employees or less may receive up to $50,000 in matching grants. In September, LWD proposed to eliminate the rule that requires companies to submit financial reports when they apply for the customized training grants. See 43 N.J.R. 2424(a). As it stands now, companies must submit three years of financial statements or, in the case of a consortium, two years of "Summary Financial Information." This proposal is a red tape success for small companies. In fact, the New Jersey Restaurant Association reached out to RTRC staff to jump-start the amendment process.

I. Delivering Government Services More Efficiently

An important corollary of reducing the red tape burdens imposed on New Jersey's taxpayers is to streamline government and to provide more efficient and effective delivery of government services. The following demonstrates just some of the improvements the State has made in the last year in this regard.

i. Avoiding Protracted Litigation

A number of entities made efforts to reduce protracted litigation. For example, the Real Estate Commission adopted regulations to change the procedure for the denial of licensure reinstatements that will allow appeals to be filed with the Commission before the Superior Court, Appellate Division, a change that is anticipated to save appellants time and money. N.J.A.C. 11:5-11.10. In addition, the Civil Service Commission proposed amending N.J.A.C. 4a:2-2.8(e) to provide that a failure to provide all required information on an applicable appeal form will lead to dismissal, after notice of such deficiency and a reasonable opportunity to correct such deficiency. The current system engenders adjudicatory delay and reduced back pay awards. This amendment will ensure that appeals are processed at a predictable pace, benefiting the appellant, appointing authority, the Office of Administrative Law, and the Commission. 43 N.J.R. 2396(a).

ii. Reducing Overlapping Jurisdiction of Departments and Agencies

DCA amended N.J.A.C. 5:14A-1.1, which concerns rider and gravity propelled rides in youth camps. Playground equipment in youth day camps or amusement areas, including water slides, is subject to inspection by DHSS. If a mechanical ride is also located in the amusement area, it is also subject to DCA inspection. DCA will now accept DHSS inspection of gravity propelled rides in youth camps and amusement areas to eliminate the duplication of inspections.

Another example is DHS' recent implementation of a program to conduct joint licensing inspections and to develop a unified report for the newly merged Addiction and Mental Health Services divisions, rather than conducting two separate reviews. Applicable agency providers for this joint review program are subject to both mental health and addiction services licensure.

iii. Maximizing Performance Outcomes to Reduce Waiting Times

Prompted, in part, by testimony to the RTRC, Consumer Affairs undertook a substantial project to improve the outcomes for licensed nurses seeking guidance from the Board of Nursing. Specifically, the Board outsourced its call center services to a third-party, non-profit organization to handle the thousands of monthly calls received from prospective and licensed nurses. This initiative led to tremendous results. Now, approximately 95 percent of phone calls are resolved on the initial call – a substantial and significant benefit for the regulated community. Moreover, by outsourcing the call center and its heavy volume of calls (the Board regulates approximately 200,000 licensees), the nursing staff has more time to concentrate on applications, complaints, more complex inquiries, and Board meetings.

iv. Improving Procurement at the Schools Development Authority

The Schools Development Authority ("SDA") proposed numerous regulatory changes to improve its procurement rules for good and services, including the services of architects, engineers, land surveyors, and other professional consultants. For example, the SDA seeks to delete the requirement that direct mailings on RFPs may only go to prequalified firms. With this proposal, mailings may go to non-prequalified firms, in the hope that interested bidders will seek prequalification and increase competition. The proposed amendments also require that selection criteria for RFPs be established prior to advertisement and that such criteria be disclosed in the RFP itself. In addition, the proposed regulations amend the bid threshold for advertising from $25,000 to $36,000. Finally, the proposal eases rules on document retention where, previously, all winning bidders were required to keep documents for ten years. See generally 43 N.J.R. 3153(a).

v. Waiver Pre-Approvals From Treasury

As one of Treasury's many reforms to streamline its in-house operations, pre-approvals of certain contracts below $10 million (waivered contracts) will no longer require Attorney General or Treasurer's office review, but rather just review from the Division of Purchase and Property.

vi. Eliminating the Smart Growth Impact Statement

On October 19, 2011, Governor Christie issued Executive Order No. 78 that created a State Strategic Plan Steering Committee to ensure that relevant State departments and agencies incorporate the goals, objectives, and values of the State Development and Redevelopment Plan. In addition, Executive Order No. 78 rescinded Executive Order No. 4 (2002), thereby eviscerating the requirement that departments and agencies proposing regulations issue a Smart Growth Impact Statement. This change should further streamline the rule-making process.

vii. Elimination of COAH

Pursuant to Governor Christie's Reorganization Plan for the Council on Affordable Housing, the New Jersey Council on Affordable Housing ("COAH") ceased to exist after August 29, 2011. The Reorganization Plan recognized the existing role of DCA in providing assistance to municipalities, oversight of the affairs of local governments, and operation of numerous affordable housing programs. The Reorganization Plan's consolidation of the statutory functions, powers, and duties of COAH with those that already exist in DCA enhances DCA's efficiency by streamlining its activities and reduces bureaucracy and repetition of functions.

V. Red Tape Legislative Efforts

The following section recaps the most significant red tape legislation enacted in 2011.

A. N.J.S.A. § 52:16A-110 – New Jersey's Non-Profit Information Portal

In accordance with this statute, the Department of State ("DOS") created a Non-Profit Information web-portal to serve as a one-stop shop for non-profits in New Jersey seeking to utilize various resources available through the State. This portal maintains, in a single, accessible location, a directory of State departments and agencies that provide grants and other financial assistance (along with eligibility criteria for such funding), various volunteer opportunities, and other information related to non-profit operation, such as forms and guidance documents. New Jersey's Non-Profit Information portal, accessible at nonprofit.nj.gov, is designed to be an invaluable resource for any non-profit seeking to operate in New Jersey. Simply put, this portal saves organizations time and money – resources that can be devoted to their core mission.

B. N.J.S.A. § 30:1-1.2 – Collaboration Between DHS and DCF

This law requires DHS and DCF to collaborate to establish uniform contracting requirements for social service organizations that contract with the Departments. Such uniform requirements are to include uniform reporting procedures and audit schedules, and centralized licensing review and issuance. Moreover, where an organization has programs licensed to provide services through both departments, each program shall be issued a license by a single Department, to the extent practicable. Such collaboration will save service providers time and administrative costs and give their employees more time to focus on clients.

C. N.J.S.A. § 52:14B-4.10 – Substantial Changes Upon Adoption

Under previous law, where, following the notice of a proposed rulemaking, an executive branch agency determined to make changes in the proposed rule which were so substantial that the changes effectively destroy the value of the original notice, the agency was required to start the rule-making process over from the beginning by issuing a new notice of proposal. This legislation, sponsored by all RTRC members, provides an agency with the ability to make substantial changes upon adoption through the issuance of a public notice and a 60-day public comment period, without starting the rule-making process anew. The first use of this new process was by the SDA. See 43 N.J.R. 2288(a).

This procedure was later used by DEP in amending N.J.A.C. 7:29-1.2. See 43 N.J.R. 3300. Specifically, and prompted by a commenter, DEP proposed excluding industrial facilities from the receptor category for noise control. Under the existing rule, sound emanating from an industrial, commercial, public service or community service facility is measured at the property line of other surrounding industrial, commercial, public service or community service facilities. For an industrial, commercial, public service, or community service facility that is located such that the noise it generates exceeds the standards in the rules only at a nearby industrial facility, the existing rule may necessitate the noise-generating facility to institute noise abatement measures in order to operate – noise abatement measures that could range in cost from a few hundred dollars to hundreds of thousands of dollars.

D. N.J.S.A. § 52:14B-5.1 – Extension of Rule Sunset

This legislation, again sponsored by all four RTRC legislative members, made a variety of changes to regulatory rulemaking including amending procedures for rule adoption. The most noteworthy change was one recommended by the Red Tape Review Group in its April 19, 2010 report to extend the sunset of agency rules from five to seven years.

E. N.J.S.A. § 54:50-38 – Exempting Sales of Certain Property from Bulk Sale Notification Requirements

To boost New Jersey's real estate market and cut red tape in order to ease the individual sale of homes and seasonal rentals, this legislation provides an exemption from New Jersey's bulk sales notification process. The bulk sales notification process was established in 2007 to ensure the State was able to collect any outstanding tax liability from businesses before they left the State or disposed of a large portion of assets. Because of the manner in which the law was written, the sale of single family homes was engulfed by the requirements. Individual home buyers had to file paperwork and provide ten days notice to the Division of Taxation for every real estate transaction, or risk liability to the State for the seller's delinquent taxes. Under this new legislation, sponsored by Senator Oroho and Assemblyman Rumana, the sale by individual sellers of one- and two- family homes, will no longer be subject to the bulk sales notification requirements.

F. N.J.S.A. § 48:2-20 - Requires BPU Orders to be Issued in Writing and Posted on Internet

Pursuant to this legislation, sponsored by Assemblyman Burzichelli, for matters of emergency or safety, BPU may issue temporary orders orally. Within 14 days of that oral order, BPU must issue a written order, available on its website, or the oral order is void.

G. N.J.S.A. § 52:14B-26, et seq. – Streamlining Process for and Mandating Review of Business Permits

This legislation empowers the Secretary of State to designate a DOS employee to serve as the contact person for any large, complex project having a significant potential economic impact to ensure that the business receives integrated project management. This contact person is responsible for assisting such business throughout the permit and approval application process, and will coordinate as needed with EDA to explore any financing opportunities. The legislation further requires the Secretary of State to conduct a permit review to assist in expediting the issuance of business permits. This consolidated and contemporaneous review of State and local-agency issued permits shall identify permits that: can be administered through an expedited process; may be obsolete, are no longer necessary, or cost more to administer than the benefits they provide, and thus should be eliminated so long as the public health, safety, or general welfare is not endangered; may be issued through an accelerated process; are redundant among different levels of government; and may be issued in a more consistent fashion.

> "I am grateful to the administration, and to the Lieutenant Governor, in particular, for streamlining the regulated profession licensing process. Reducing the destructive burden of red tape will help attract highly qualified health professionals of all specialties to live and work in New Jersey."
>
> - Dr. Anthony DeCarlo, a veterinarian and president of the New Jersey Veterinary Medical Association

H. N.J.S.A. § 52:14B-21.1- Uniform Small Business Assistance Application

Pursuant to this legislation, DOS, in conjunction with EDA, will establish and maintain a program to help small businesses identify financial assistance programs offered by any State agency and create one uniform application for the purpose of gathering basic operational and financial information relevant to seeking this assistance.

I. N.J.S.A. § 52:13H-12 - Expands Organizations that can File Complaints with Council on Local Mandates

In response to testimony on unfunded mandates received at the Red Tape Review Group's meeting at Brookdale Community College, Senator Oroho and Assemblymen Burzichelli and Rumana, among others, sponsored this legislation to enable more entities, including fire districts, to challenge unfunded mandates at the Council on Local Mandates.

J. N.J.S.A. § 5:12-1, et seq. – Streamlining Government in Atlantic City

Among various other legislative fixes designed to streamline regulatory oversight, this legislation clarifies the roles of the Casino Control Commission ("CCC") and the Division of Gaming Enforcement ("DGE") to avoid duplication. CCC now has full control over licensing and regulatory disputes, while DGE oversees day-to-day casino regulation. In the past, these agencies had overlapping responsibilities. This legislation was sponsored by Assemblyman Burzichelli.

In addition, this legislation established the "New Jersey First" program, requiring DGE to issue a field trial approval within 14 days of receiving any complete written request for approval of electronic gaming equipment, where such request is received by DGE prior to or simultaneously with all other gaming jurisdictions or independent testing laboratories. By streamlining submissions when New Jersey has the opportunity to be the first state in the nation to offer electronic gaming equipment, DGE gives New Jersey casinos a competitive edge.

K. N.J.S.A. § 19:2-1, et seq. – Eliminating the Separate Presidential Primary Election

On September 26, 2011, Acting Governor Guadagno signed this legislation eliminating the separate presidential primary election held in February of presidential election years. The presidential primary will be held, instead, at the same time as the regular primary election on the first Tuesday after the first Monday in June. Prior to the 2008 election, the presidential primary was held at the same time as the regular primary election in June. However, in 2005, the presidential primary was moved to February in an effort to increase the State's significance in the election. Many other states moved their presidential primary as well, and New Jersey was one of 24 states holding primary elections in February.

This legislation, sponsored by Senator Stack, will result in a savings to the State General Fund and to local government entities of approximately $12 million.

L. N.J.S.A. § 52:17B-68 – Extending Police Certification

This legislation establishes that certain laid-off police officers would not be required to retake the basic police training course if they are employed within five years from the date of being laid off. This is a change from prior Police Training Commission policy which required a police officer who had a break in service of more than three years to retake the basic training course.

M. N.J.S.A.§ 48:4-2.1, et seq. – Prohibiting MVC Bus Inspections on Casino-Owned Property

Prompted by testimony to the Red Tape Review Group and sponsored by Assemblyman Burzichelli, this legislation prohibits MVC from inspecting buses on casino-owned property and designated casino parking, pick-up, and drop-off locations, absent enumerated exigent circumstances.

N. N.J.S.A.§ 56:6-2 – Permitting Use of Rebates, Allowances, Concessions, or Benefits for Motor Fuel Purchases on Credit, Debit, or Rewards Cards

This legislation provides that a consumer who earns credits through purchases on a credit card, debit card, or rewards card may utilize those credits to receive a rebate, allowance, concession, or benefit when that person purchases motor fuels, thereby effectively lowering the price of gas for many New Jersey consumers. The archaic nature of New Jersey's former law was brought to the attention of the RTRC. This bill, sponsored by, among others, Senator Oroho and Assemblyman Burzichelli, not only modernizes New Jersey's law, but brings the State's motor fuel statutes in line with those of the majority of other states, including nearby Pennsylvania, New York, Delaware, Maryland, and Connecticut.

O. N.J.S.A.§ 56:15-1, et seq. – New Jersey Trade Secrets Acts

This act, based on the Uniform Trade Secrets Act prepared by the National Conference of Commissioners on Uniform State Laws, sets forth remedies available to the holder of a trade secret that has been acquired by improper means or improperly disclosed. Prior to introduction of this legislation, New Jersey was one of just four states that had not adopted some form of the Uniform Trade Secrets Law.

P. N.J.S.A.§ 4:24-20.1, et seq. – Requiring State, Regional, and Local Authorities, Boards, and Commissions to Establish an Internet Website and Post Information Related to Each Entity's Mission, Finances, Meetings, and Employees

In a homage to the Information Age and at the behest of the Office of the State Comptroller, this legislation, sponsored by Senator Oroho, requires government agencies with independent fiscal authority responsibility for the expenditure of public funds to establish webpages with basic and significant information about their operations and fiscal affairs, thereby providing the public with improved access to each entity's operations and activities.

Q. N.J.S.A.§ 33:1-75, et seq. – Eliminating Permit Requirement for Home Production of Wine and Beer for Personal Use

Under prior law, a person, over the age of 21, was permitted to annually manufacturer at home up to 200 gallons of wine or beer for personal or household use or consumption, so long as a permit was obtained from the Division of Alcoholic Beverage Control. This legislation, sponsored by Assemblyman Burzichelli, eliminates the requirement to obtain a permit for such production.

R. N.J.S.A. § 12:7C-9 – Streamlining MVC's Ability to Process Title Transfer of Abandoned Vessels

This legislation removes the requirement that a person or entity seeking to acquire title to an abandoned vessel apply to a court for a transfer of title, instead only needing to apply to the MVC.

S. N.J.S.A.§ 26:8-41 – Authorizing Marriage and Civil Union by Proxy for Certain Persons Serving Overseas

This legislation provides that a member of the Armed Forces or the National Guard who is stationed overseas and serving in a conflict or war and is unable to appear at his or her marriage or civil union may enter into that marriage or civil union by proxy.

T. N.J.S.A.§ 52:14-18, et seq. – Reducing the Number of Reports and Publications Printed by the State

This legislation requires all reports and publications produced by the State that are submitted to the Governor or the Legislature, or made available to the public to be posted on the Internet in lieu of printing. Moreover, rather than require that 75 print copies be submitted to the State Library, this legislation reduces that requirement to one electronic copy and a mere six printed copies.

U. N.J.S.A.§ 52:14B-1, et seq. – Restricting the Use of Regulatory Guidance Documents

Sponsored by Senator Oroho and Assemblyman Burzichelli, this legislation provides that no State agency shall utilize regulatory guidance documents that have not been adopted in accordance with the Administrative Procedure Act unless the agency makes such documents readily available to the regulated community through appropriate means, such as posting in a prominent place on the agency's website. This requirement will provide a single, uniform standard for the distribution of agency guidance, and allow regulated entities up-to-the-minute access to changes in regulatory standards.

Any regulatory guidance document not adopted in accordance with the Administrative Procedure Act may not impose any new or additional requirements that are not included in State or federal law or rule that the regulatory guidance document is intended to clarify or explain and may not be used as a substitute for enforcement.

V. N.J.S.A.§ 48:5A-1, et seq. – Online Submission of Required Documents to BPU

This legislation directs BPU to establish an online process for the submission of required documents by cable television providers, public utilities, and other entities licensed by or subject to the jurisdiction of BPU. The bill was sponsored by Assemblyman Burzichelli.

W. N.J.S.A.§ 40:55D-1, et seq. – Exempting Certain Collocations of Wireless Equipment From Site Plan Approval

This legislation provides that an application for development to collocate wireless communications equipment on a wireless communications support structure or in an existing equipment compound shall not be subject to site plan review provided that the application meets certain requirements, including that the application does not create a condition for which variance relief would be required. This bill will reduce unnecessary delays in the application process and provide the wireless industry with the ability to efficiently and expeditiously respond to changing consumer needs and market demands.

X. N.J.S.A.§ 13:1G-1, et seq. – Exempting Amusement Parks and Carnival Amusement Rides from Noise Restrictions Under Limited Conditions

Finally, legislation was enacted that exempts those operating amusement park or carnival amusement rides between May 15 and October 15 from the restrictions of the Noise Control Act of 1971 provided that the ride is complying with manufacturer recommendations for maintenance and lubrication to minimize, to the extent practicable, the noise sources within and on the ride.

VI. Red Tape Recommendations

A. Unify and Streamline Bidding and Procurement Procedures

Starting with the red tape transition meetings, businesses – typically small businesses – have expressed their frustrations with the often confusing and inconsistent nature of the State's procurement processes. These inquiries ranged from the broad (such as greater use of electronic bidding) to the specific (regulations proscribing, in minutia, the appropriate binding, margins, and type-setting of hard copy bids). These inquiries highlighted the State's variety of laws and regulations governing bidding and procurement that often vary in procedural and substantive ways. By way of example only, departments and agencies have different rules governing electronic bid solicitation and acceptance, different times for the close of bidding, and different rules governing the treatment of late bids. There is no central repository for repeat bidder information. But the idiosyncrasies are not all procedural.

These variations entail costs of time and frustration for businesses and, on occasion, lead to procedural missteps that bar otherwise competitive bids. To such ends, the State should strive to unify its bidding and procurement statutes, rules, and regulations to make them as user-friendly as possible. The RTRC, with advice from the Treasury, among others, is poised to provide valuable support and assistance in the State's efforts to unify this hodgepodge of processes and identify best practices to be implemented across State government. The RTRC plans to devote at least one public meeting in 2012 to these issues.

Consistent with the spirit of Executive Order No. 2, such an endeavor would allow businesses to spend their time, money, and efforts on growing jobs and doing business; not complying with overly proscriptive rules. Moreover, any streamlining of bidding and procurement processes will also improve government transparency and accountability.

B. Expansion of Best Practices and Model Programs

As demonstrated by the red tape successes discussed above, the Administration has proactively implemented numerous programs, policies, and initiatives to streamline government, cut red tape, and invigorate the economy. In view of that two-year track record of progress, the State must replicate successful and effective initiatives in analogous circumstances across State government. The electronic submission of applications, the use of automated workflows, and the outsourcing of certain functions are just a few of the improved processes that have seemingly more widespread applicability.

Another example is DEP's LSRP program which has successfully streamlined economic development. Buoyed by those early returns, DEP and other departments and agencies, including DCA, should consider replicating the program outside of the site remediation context. By empowering licensed professionals – not government bureaucrats – to use their professional judgment in a variety of contexts, economic development can be streamlined.

DEP's increased usage of general permits and general operating permits is another success worthy of replication. These pre-approved permits cover minor activities, do not require extensive submittal of data, and allow departmental staff to focus greater attention on individual permits which encompass more complex activities. Though DEP has made notable progress in this regard, DEP, as well as all other permit issuing departments and agencies, should expand the use of such permits.

C. Repeal / Modify Antiquated, Outdated, Outmoded, and Obsolete Permits

On March 1, 2012, pursuant to N.J.S.A. § 52:14B-30(a), DOS will issue a report which will culminate a year-long consolidated and contemporaneous review of State and local agency-issued business permits, identifying those that: could be issued through an expedited process, may be obsolete, are no longer necessary, or cost more to administer than the benefits they provide and thus should be eliminated so long as the public health, safety, or general welfare is not endangered; can be issued through an accelerated process; are redundant among different levels of government; and methods to ensure more consistent in permitting issuance.

A few of the recommendations to be identified in that report for the repeal of antiquated, outdated, outmoded, and obsolete permits deserve mention here.

i. Smart Moves for Business Program, N.J.A.C. 16:50-1.1, et seq.

These regulations govern the Department of Transportation's ("DOT") Smart Moves for Business Program which encourages New Jersey employers to voluntarily implement programs that reduce work-related vehicle trips and vehicle miles traveled to worksites. Participating employers are required to register with the DOT and submit a Smart Moves for Business Program Narrative. The DOT has identified these regulations as no longer necessary.

ii. Certificate of Public Convenience and Necessity

A vestige from the era when bus service was a public utility, bus operators in New Jersey are required to submit a 20-page application for a Certificate of Public Convenience and Necessity and file annual reports and financial information. MVC has formed a Passenger Transportation Advisory Council consisting of members of the transportation industry, both public and private, federal, state, and local, to examine this and other requirements. See N.J.S.A. § 48:4-1; N.J.S.A. 48:2-56.6; N.J.A.C. 16:51-3.1, et seq.

iii. Sun Screening Provider Licensure, N.J.S.A. § 39:3-75.1, et seq., N.J.A.C. 13:20-1.1, et seq.

MVC enforces N.J.S.A. § 39:3-75.1, et seq. and N.J.A.C. 13:20-1.1, et seq., which require the licensing of providers of medically necessary sun screening (window tint) to ensure that only those with a medical exemption card can have windows tinted to a specified translucence. The application process is comprehensive, and there are only six licensed window tint providers in the State. Moreover, if stopped by a law enforcement officer for window tinting, it is the driver's responsibility to present authorization for the medically necessary tinting. Because there is no crucial reason why the tinting must be done by a licensed window tinter, this license should be eliminated.

iv. Raffle Restrictions on Non-Profits – N.J.A.C. 13:47-6.11(a)(5)

This regulation limits off-premises 50/50 cash draw raffles to one per month. Although adequate for many, smaller non-profits, it can prove unduly restrictive for larger non-profits with a statewide footprint.

v. Eliminate Fees Associated with Clerical Errors

Based on an email inquiry to the RTRC's dedicated email account, the DOS learned of a limited liability company whose business registration contained a typo – an omitted letter from a member's name. Unfortunately, N.J.S.A. § 42:2B-65(a)(5) contains an unwaivable $100 fee for the correction of a certificate of formation – regardless of how minute the correction may be. Policymakers should consider amending this and other similar statutory and regulatory provisions to provide that such fees for clerical errors and typos may be waived in the discretion of an appropriate government official.

D. Modernize Outdated Laws

In July 2011, the New Jersey Law Revision Commission issued a Draft Tentative Report Relating to Repeal of Anachronistic and Invalid Statutes. According to the Law Revision Commission, which provided testimony to the RTRC at its 2011 Atlantic City public hearing, many of the statutory provisions it identified "continue to look like valid law. Removal of some of these provisions serves the function of removing ambiguities from the law." The following are among the recommendations affecting business.

- N.J.S.A. § 26:4-42 to -45 – Prohibits "person[s] having a venereal disease in the infectious stage" from engaging in certain occupations and impose restrictions on their movement without securing a permit.
- N.J.S.A. § 48:18A-1 to -4 –Provide procedures for the termination of private turnpike and plank road companies. No such companies remain in New Jersey.
- N.J.S.A. § 29:4-1 to -4 –Require hotels containing ten or fewer rooms to keep and preserve a guest register. The guest register must contain the guest's name, address, room occupied, and license plate number. Importantly, however, these requirements apply only to hotels of ten or fewer rooms.
- N.J.S.A. § 45:20-1 to -3 – Limit fees charged by millers of grain and require millers to have, on premises, specific items, such as a standard bushel measure and a strike to level the grain in it.
- N.J.S.A. § 48:8-1 to 17 – Regulate ferries and steamboats. In light of modern concerns, some of the enumerated requirements are outdated.
- N.J.S.A. § 48:12-158 – Prohibit the placement of a freight car at the rear of a passenger car in a passenger train.
- N.J.S.A. § 30:9-28, -29, -35 to -44.3, -61 to -69, -70 to -81, -85 to -86 – Regulate county and municipal hospitals for communicable diseases. No such institutions currently exist in New Jersey.

"The concerns of non-profit organizations in New Jersey, regarding duplicative and inconsistent contract requirements, and antiquated reporting methods, are, for the first time in my memory, being given serious attention because of the work of the Red Tape Review Commission."

– Joseph Masciandaro, Care Plus NJ, Inc.

E. Eliminate Hidden Costs of Occupational Licensure

Across State government, departments and agencies should endeavor to reduce and eliminate hidden costs – both in terms of money and time – associated with occupational licensure.

i. Letters of Reference

Numerous license applicants must provide five letters of reference. To the extent such references remain necessary, this quantity is burdensome and should be reduced to no more than three. The extra letters place additional obligations on the putative licensees and the letter writers. Among those professions requiring more than three letters of reference are: professional planners, N.J.S.A. § 45:14A-8; land surveyors, N.J.S.A. § 45:8-35; professional engineers, N.J.S.A. § 45:8-35; and landscape architects, N.J.A.C. 13:27-8.5(a)(3).

ii. Residency and Office Requirements

Pursuant to N.J.S.A. § 45:7-49(4), an applicant for an initial licensure as a funeral director "[s]hall have been a resident of the State of New Jersey continuously during the period of his [or her] training and experience" – a period of two years. Last amended in 1960, this parochial residency requirement is a vestige of a bygone era and is not enforced by Consumer Affairs due to its questionable constitutional footing.

iii. Pawnbrokers

Although the governing statute and regulation make no mention of the submission of a financial statement of any kind by a prospective pawnbroker, the pawnbroker license application filed with DOBI requires the submission of a CPA-prepared audited financial statement. See http://www.state.nj.us/dobi/banklicensing/pawnapp.pdf. That requirement – untethered to any statutory or regulatory requirement – adds a significant, albeit hidden, cost to a prospective business and should be eliminated.

iv. Continuing Education

1. Ease Restrictions on Continuing Education Providers

During the course of this permit review, two professional boards endeavored to reduce red tape with respect to continuing education providers. First, rather than have the Board approve individual continuing education course requirements one-by-one, the State Board of Social Work Examiners proposed regulations that permit it to recognize entities that can provide approved continuing education courses. 43 N.J.R. 2731(a). Second, the Board of Examiners of Electrical Contractors adopted regulatory amendments that, rather that require providers of continuing education to reapply to the board for approval every three years (with full documentation and a $100 fee), absent any change in course content, hours of instruction, or lecturer for a previously approved course, the provider no longer need re-apply for approval. N.J.A.C. 13:31-1.7.

These replicable red tape cutting measures will assist the continuing education providers more efficiently administer their programs – efficiencies that can be passed on to course participants in reduced fees.

2. Ease Unnecessary Restrictions to Obtain Continuing Education Credits

In addition to cutting red tape that stifles continuing education providers, departments and agencies should look for opportunities to cut red tape that suffocates licensed professionals.

First, entities should leverage information technology and, to the greatest extent possible, provide for distance learning. The State Board of Respiratory Care Practitioners recently adopted new regulations doing just that, increasing the number of continuing education credits permitted for videotaped,

internet, and other distance learning from 15 to 20. According to the Board, this change "could result in cost savings for licensees" by "permit[ting] licensees to forgo the expense, both time and money of traveling to more traditional continuing educations courses" at distant locations. 43 N.J.R. 2188(a).

Second, entities must ensure that any restrictions on credits are necessary and, when unnecessary, ease them. For example, the Board of Social Work Examiners amended its regulations to permit more credits of in-service training to count towards the continuing education requirements, increasing the cap from six to ten, and removed the limitations on the number of credits that may be directly related to clinical practice. 43 N.J.R. 2731(a).

Third, entities should carefully study whether non-traditional education may satisfy continuing education requirements. For example, the delivery of lectures, authorship of articles, and provision of pro bono services may, in some instances, educate as well as provide other beneficial results to the professional community and public-at-large. Such opportunities for benefits to the commonweal should be considered.

v. Revise New Jersey Specific Examinations

Policymakers should carefully review whether the specific New Jersey examinations remain necessary for license applicants in order to adequately protect the public health, welfare, and safety.

To the extent New Jersey specific examinations remain necessary, the licensing entities should, where appropriate, offer such examinations online as a component of an orientation to New Jersey law and regulation. A similar online orientation has been implemented by the Board of Medical Examiners and has been well received, as has an online continuing education module for physical therapists.

Currently, many boards offer their respective tests only in New Jersey and only at infrequent times. By making such tests, in appropriate circumstances, online orientations, we ensure that applicants are familiar with the New Jersey laws and regulations applicable to their profession without unduly burdening applicants with logistical problems. For example, such an online orientation would make sense for veterinarians. Currently, the required New Jersey jurisprudence exam is offered only twice a year, and the passage rate of that test is in excess of 95 percent.

vi. Streamline Reciprocity / Licensure by Credentials for Occupational Licensees

In an effort to protect the public health, safety, and welfare, licensure has increased dramatically in New Jersey. Unfortunately, this growth has not been uniform, as the Legislature has enacted licensure laws with diversely worded language and the various licensing entities have crafted regulations that put their own stamp on their profession. This lack of uniformity is particularly noteworthy in the context of reciprocity and licensure by credentials among those professional occupations regulated by the professional boards within the Division of Consumer Affairs, particularly veterinarians. Streamlined licensure for out-of-state licensees seeking to work, do business, and create jobs in New Jersey, will allow for further cross-training of staff, simplifying the granting of licenses, and freeing up staff to work on other matters. And, because any such licensee has already been licensed by another state or territory with substantially similar requirements, this streamlining can be accomplished at little to no risk to the public's health, safety, and welfare.

Thus, such a statutory amendment would be a win for the economy, a win for reducing government largesse, and a win for the public.

vii. Improve Reinstatement Provisions for Occupational Licensees

Pursuant to N.J.S.A. § 45:1-7.1 & 7.2, any licensee subject to the Division of Consumer Affairs' purview who allows his license to lapse may seek reinstatement within five years of such lapse, upon: (1) payment of all past delinquent renewal fees and a reinstatement fee; (2) submission of an affidavit of employment listing jobs held during the lapse; and (3), if applicable, proof that the applicant has maintained proficiency by completing continuing education. However, should that license lapse for more than five years, the licensee must "successfully complete the examination required for initial licensure . . . and . . . payment of an additional reinstatement fee." N.J.S.A. § 45:1-7.1(d). For licensees who continue to practice their profession in another state and maintain a license in good standing in that state, this result defies common sense.

F. Reduce Governmental Overlap

In an effort to streamline government and provide more efficient delivery of services to taxpayers, the State must continue to reduce unnecessary redundancy across State government. To such ends, the policymakers should consider rectifying the following jurisdictional overlaps.

i. Auto Body Repair Facility Licensing

Applicants for auto body repair facility licenses must apply to MVC to operate their business. See N.J.S.A. § 39:13-1, et seq.; N.J.A.C. 13:21-21.1, et seq. But, the actual business of auto body repair has no logical connection to the MVC – other than the fact that repair work is done on motor vehicles. DEP, Consumer Affairs, and DOBI regulate auto repair facilities. Furthermore, local fire departments inspect the facilities, and municipalities issue zoning, mercantile, and operating permits. Accordingly, to reduce redundancy, MVC's permitting function should be transferred to another of several, more properly suited State entities.

ii. Emergency Light Permits

MVC issues permits to applicants seeking to display red, blue, or amber flashing lights on their vehicles. See N.J.S.A. § 39:3-54.20; N.J.S.A. 39:3-54.7; N.J.A.C. 13:24-1.1, et seq. MVC requires that the application for a permit for such lights be signed by an authorized representative of the entity for which the applicant works. Authorized representatives include mayors or chief executive officers in municipalities where service is provided, directors of boards of chosen freeholders, and county emergency management coordinators. In addition, search and rescue team members must seek approval from the county emergency management coordinator, then the director of the State Office of Emergency Management, before seeking a permit from MVC. Ultimately, however, it is the authorized entity employing the applicant deciding who will be issued a permit and law enforcement on the highways ensuring that those using flashing lights are in possession of a permit.

MVC does not inspect light installation nor does it monitor light usage on the roadways. Because other government entities that seek the permits must approve their employees' use of such lights, MVC's involvement is redundant and superfluous. Indeed, this process costs the MVC substantial sums that are not recouped via fees.

iii. Multiple Dwelling Inspections

There is an overlap of jurisdiction under New Jersey law concerning the maintenance requirements for and inspection of hotels and multiple dwellings. While State law provides municipalities with the ability to adopt local ordinances establishing minimum maintenance standards that are applicable to all types of buildings, statues enacted subsequently to that law place the responsibility to enforce building maintenance standards in hotels and multiple dwellings with the State, specifically the Bureau of Housing Inspection, Division of Codes and Standards, in DCA. Moreover, there is also a duplication of laws permitting or requiring landlord registration, which creates confusion and permits additional fees to be charged to landlords for the same process. This confusing array of laws requires correction, so that the State's requirements for landlord registration, and maintenance and use standards and inspection of multiple dwellings are clear and not duplicated at the local level.

G. Deploy Technology to Cut Red Tape

The State must continue to make government, its laws and regulations, and interaction easier for taxpayers. A few simple ideas should facilitate this goal.

i. Require Departments and Agencies to Post Laws and Current and Pending Regulation Online

To improve accessibility to businesses – specifically small business – seeking to comply with State laws and regulations, departments and agencies should provide on their homepages links to laws and current and pending regulation. By providing ready access to the statutes and regulations governing New Jersey's citizens, businesses, and regulated entities, departments and agencies will facilitate understanding of and compliance with their laws and rules, further facilitating Executive Order No. 2's Common Sense Principle of valuing compliance over the punitive imposition of penalties for violations.

ii. Require Departments to Accept E-mail Comments on Proposed Regulations

The Administrative Procedures Act, specifically N.J.S.A. 52:14B-4(a)(3), requires that agencies shall "[a]fford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing." Although the statute requires regulatory bodies to accept written comments on proposed rules it does not, however, require departments and agencies to accept e-mailed comments.

Although many entities accept emailed and/or electronic comments, some do not. See 43 N.J.R. 2179(a); 43 N.J.R. 2997(a). Efforts should be made to correct this antiquated practice.

iii. Create a ListServ to Notify Stakeholders

In order to facilitate communication with the regulated community, DEP offers a ListServ to interested constituents, notifying them via email of proposed regulations. This is an efficient and cost-effective form of communication that should be replicated.

VII. Conclusion

The foregoing demonstrates two inescapable conclusions. First, the State made substantial progress in reducing onerous and burdensome red tape in 2011 – a continuation of a process began in the first days of the Christie Administration through a series of executive orders. The bi-partisan RTRC is proud to have contributed to a State-wide endeavor to establish a new approach to administrative rule-making and create a culture change in State government. To be sure, these efforts in reducing red tape, improving governmental efficiencies, and streamlining the delivery of government services play a key role in our broader effort to make New Jersey a more attractive place for businesses and, more importantly, job creation.

Second, the foregoing demonstrates that work remains to be done. New Jersey's regulatory climate was not made in a day, or even two years. Nor can it be fully rectified in that short a time frame. Although substantial progress has been made with respect to transforming the State's culture with respect to rulemaking, that momentum must be maintained. Indeed, this culture change is an on-going process, and all State employees and representatives – including the RTRC – must continue to improve our efficiency and effectiveness.

To such ends, the RTRC remains committed to its founding principles. By acting on the policy recommendations made above and continuing to engage the public in this important debate, the RTRC can help ensure that New Jersey's business environment continues to improve.