



CONNECTICUT
BUSINESS & INDUSTRY
ASSOCIATION

TESTIMONY OF ERIC J. BROWN
CONNECTICUT BUSINESS & INDUSTRY ASSOCIATION

before the
GOVERNMENT ADMINISTRATION AND ELECTIONS COMMITTEE

February 13, 2015

Good afternoon. My name is Eric Brown and I am an attorney with the Connecticut Business & Industry Association ("CBIA"). CBIA's mission is to work with our members and public officials to make Connecticut a more attractive location for business investment in order to grow jobs and economic opportunity for those who live here. Our members include businesses from across the state of all sizes and from nearly every industry in Connecticut.

Thank you for this opportunity to submit comments in support of Proposed Bill 845, An Act Concerning Fiscal Impact of Proposed Agency Regulation.

This bill would modify two aspects of the Uniform Administrative Procedures Act with respect to the adoption of regulations. First, the bill seeks to expand existing requirements for cost impacts on small businesses to include such impacts on businesses of any size. Second, the bill seeks to modify the discretionary authority of the Regulations Review Committee to hold public hearings on any proposed regulation to a mandatory requirement for a hearing on any regulations with a potential cost to municipalities or businesses.

CBIA greatly appreciates this committee's continued focus on improving Connecticut's regulatory climate – an aspect of our government that creates challenges for many businesses and hurts our competitive ranking relative to other states.

The challenges with our regulatory climate have both substantive and procedural components. That is, the regulatory standards in Connecticut are often very aggressive relative to other states. But also, the procedures we follow in adopting regulations too often do not ensure that the potential consequences of regulatory proposals on our businesses and our economy are

sufficiently understood and considered prior to the final adoption of a regulation. This bill focuses on the latter - seeking to ensure through agency analyses and public scrutiny within the legislative review process, that fiscal and other impacts of proposed regulations are fully explored and subject to public input prior to final adoption.

CBIA applauds the proposals set forth in this bill. We have been directly involved with several legislative changes over the years to try achieve the goals of improving Connecticut's regulatory adoption process. We are unconvinced that agencies have embraced all those changes and are abiding by the spirit, as well as the letter of those laws.

We are extremely pleased that Governor Malloy has also recognized these challenges and, on October 16, 2013, issued Executive Order No. 37 which includes a number of agency requirements in order to create "A MORE TRANSPARENT AND EFFICIENT REGULATORY PROCESS" (See attached). These requirements include measures for evaluating cost impacts of proposed regulations.¹ But there are many other important components of the executive order that we believe are important as well. However, again, we are unconvinced that agencies are fully embracing and implementing these provisions of the executive order.

Accordingly, CBIA would like to propose that this bill be expanded to include language designed to determine whether, and to what extent agencies are implementing the executive order. While it may be a bit unusual for the legislature to play such a role with respect to the executive branch, it would nonetheless help the legislature determine, if the provisions are not being fully embraced and implemented with some rigor, whether the legislature should take action itself to require such procedures. An alternative approach would be to simply codify the requirements.

¹ Item 6b.: "strive to ensure in all cases that the benefits of regulations justify their costs. . ."

Item 7a: For regulations of significant impact, "develop, consider, and make public a rigorous impact analysis, which shall include, but not necessarily be limited to: (a) a review of both qualitative and quantitative costs and benefits . . ."

Should this committee and the legislature deem it appropriate to take the former, more information-gathering approach, our suggestion would be to require the “Officer of Regulatory Affairs”² (established under item 11 of the executive order), to provide an annual report to the committee of cognizance, as to the extent to which the procedures required by the executive order have been implemented – providing specific examples of regulatory proposals and how the requirements were applied. As an initial draft for your consideration:

“Not earlier than January 15 nor later than February 15 of each year for the next 4 years following passage of this section, the regulatory affairs officer for all direct report agencies, shall prepare and present to the committee or committees of the General Assembly having cognizance over matters concerning their agency, a report describing in detail with specific examples from within the previous 12 months, the status of the implementation of items 6-10 of Executive Order No. 37 dated October 13, 2013.

If it be the committee’s desire to use this approach but with a limited number of agencies, we would recommend: Department of Banking, Department of Energy and Environmental Protection, Department of Labor, and the Department of Public Health.

If the codification approach is preferred, the committee could simply amend this bill to reflect the provisions of the “more transparent and efficient regulatory process” provisions of the executive order.

CBIA understands that other organizations may seek amendments to this bill to provide some procedural protections for the issuance of general permits by the Department of Energy and Environmental Protection (“DEEP”). CBIA is supportive of this concept. Many general permits now are indistinguishable on their face and effect from a “traditional” regulation. And yet, DEEP has sole authority for developing and issuing these documents which can have far reaching impacts on businesses and municipalities as demonstrated by the current debate over

² List of designated “Officer of Regulatory Affairs” for each agency is attached.

DEEP's proposed municipal storm water general permit. We would enthusiastically welcome the opportunity to work with this committee and other stakeholders on this important issue, as well.

Before concluding – let us note that discussions on improving the regulatory adoption process often lead some to point the blame for our regulatory challenges on the fact that Connecticut's constitution requires legislative review of all proposed regulations. Let me strongly emphasize on behalf of CBIA and our members that we vehemently and categorically disagree with that argument. It is clear to us that the vast majority of proposed regulations that get hung-up in the Regulations Review Committee process are the result of shortcomings in the development of those proposals prior to their arrival at the committee for final consideration.

In conclusion, Connecticut's regulatory climate is a very important issue for CBIA and our members. We appreciate this committee's continuing efforts to address the challenges and we stand ready and anxious to work with you and other interested stakeholders improve this governmental function which directly impacts economic opportunity in our state.

Thank you kindly for this opportunity to provide comment.

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STATE OF CONNECTICUT

BY HIS EXCELLENCY

DANNEL P. MALLOY

EXECUTIVE ORDER NO. 37

WHEREAS, my administration is committed to creating jobs, enhancing opportunities for Connecticut businesses, and otherwise supporting the economic development of the state;

WHEREAS, my administration is committed to promoting the transparency of and accessibility to state regulations, as demonstrated by the establishment of the eRegulations System, which is already providing online access to state regulations and will eventually provide real-time web access to the entire regulation-making record;

WHEREAS, while state regulations are often necessary to promote public health, safety, welfare, and protect our environment, they must be reviewed periodically to identify those that have become outdated, unnecessarily burdensome, insufficient, or ineffective;

WHEREAS, Connecticut's businesses, non-profits, and residents can provide invaluable insight into which regulations should be kept and which others should be modified or repealed;

WHEREAS, regulatory policy benefits from public participation in the administrative process;

WHEREAS, the procedures required under Connecticut law for promulgating and amending regulations can be time-consuming and cumbersome and, as a result, regulations that should be repealed or modified are often left unchanged;

WHEREAS, in all instances, the benefits of regulations must justify their costs, and the objectives of regulations must be achieved through the least burdensome means available;

NOW, THEREFORE, I, DANNEL P. MALLOY, Governor of the State of Connecticut, by virtue of the power and authority vested in me by the Constitution and by the Statutes of the State of Connecticut do hereby **ORDER AND DIRECT**:

AGENCY REVIEW OF EXISTING REGULATIONS

1. Effective immediately, my office shall solicit public comments regarding regulations that have been in effect for greater than four years and whether such regulations are outdated, unnecessarily burdensome, insufficient, or ineffective. Comments must be submitted through the Governor's website at www.governor.ct.gov/regulations. Comments should be submitted by December 16, 2013 and should identify the name and affiliation of the commenter, the regulation commented on (by title or section number), the relevant agency, any regulatory action advocated (for example, repeal or modification), and the reason such action is sought. State regulations may be accessed at www.ct.gov/eregulations.
2. My office will provide each agency with the public comments received relating to regulations under its jurisdiction. Each agency shall undertake an analysis of all comments

received in order to identify any regulations that are outdated, unnecessarily burdensome, insufficient, or ineffective.

3. Additionally, each agency shall conduct an independent review of all regulations under such agency's jurisdiction that have been in effect for greater than four years in order to identify any that are outdated, unnecessarily burdensome, insufficient or ineffective.
4. On or before February 3, 2014, each agency shall provide my office with a report that: (a) summarizes the comments received regarding regulations under its jurisdiction; (b) recommends the elimination or modification of any regulation that it deems outdated, unnecessarily burdensome, insufficient, or ineffective pursuant to Sections 2 and 3 of this Order; and (c) offers a plan for implementing such recommendations.
5. Each agency shall, upon the approval of my office and the Office of Policy and Management, work to implement such plan as expeditiously as feasible and permitted by law.

A MORE TRANSPARENT AND EFFICIENT REGULATORY PROCESS

Effective immediately, for any new regulation, and for any repeal or modification of an existing regulation not made pursuant to Section 5 of this Order, the following principles and procedures shall apply:

6. Before taking any regulatory action, each agency shall:
 - a. clearly identify their policy goals, carefully consider whether additional regulation is needed to achieve those goals, and strive to address those needs in a manner proportionate to their significance;
 - b. each agency shall strive to ensure in all cases that the benefits of regulations justify their costs, whether qualitative or quantitative, and that regulations employ the least burdensome means available to achieve regulatory objectives;
 - c. endeavor to encourage economic progress and the development of jobs in Connecticut, and only seek to regulate when there is a clear need for regulation;
 - d. identify best practices for regulation, using the most innovative and least burdensome tools for achieving regulatory ends, including economic incentives, performance standards, and disclosure requirements;
 - e. write regulations in language that is plain and easily understood.
7. Before taking any regulatory action relating a regulation of significant impact, each agency shall:
 - a. develop, consider, and make public a rigorous impact analysis, which shall include, but not necessarily be limited to: (a) a review of both qualitative and quantitative costs and benefits, based on the best available empirical and scientific information; and (b) an evaluation of feasible regulatory alternatives that would achieve the same regulatory objectives;
 - b. where practicable, engage with external experts and academic institutions to inform such impact analysis.
8. Where appropriate, prior to issuing formal notice pursuant to section 4-168 of the General Statutes, an agency shall gather public input relevant to the subject matter of a potential regulation by publishing an advance notice of proposed rule-making on the eRegulations website and indicating how the public may comment.
9. To the extent feasible and permitted by law, where an agency anticipates proposing a regulation of significant impact, such agency shall give notice of its intent to regulate pursuant to section 4-168 of the Connecticut General Statutes no fewer than sixty days prior to submitting such proposed regulation to the Attorney General for review, thereby providing the public with an extended opportunity to submit written comments on the proposed regulation. Prior to submission to the Attorney General, each agency shall revise such proposed regulation, where appropriate, to incorporate the substance of comments received.
10. Each agency must continue to receive approval from the Office of Policy and Management and the Office of the Governor prior to issuing a notice of its intent to regulate pursuant to section 4-168 of the Connecticut General Statutes. Each agency shall submit a draft of any

proposed regulation to the Office of Policy and Management and the Office of the Governor not less than thirty days prior to giving such notice. The Office of Policy and Management shall: (a) review the draft regulation to ensure compliance with the provisions of Sections 6 and 7 of this Order, and (b) distribute the draft regulation to other affected agencies in order to (i) determine if there is a risk of inconsistent or duplicative regulation and (ii) identify any other conflicts of policy.

IMPLEMENTATION OF THIS ORDER

11. Each agency shall designate an Officer of Regulatory Affairs to coordinate with my office in implementing the provisions of this Order, and report the name of such person to the Governor's General Counsel's Office.
12. As used in this Order, the term "regulatory action" is defined to include (a) giving notice of intent to regulate pursuant to section 4-168 of the Connecticut General Statutes and (b) adopting a proposed regulation.
13. As used in this Order, the term "regulation of significant impact" shall mean any regulation that may have an adverse impact on small businesses, will have a significant financial impact on medium or large businesses, is anticipated to have a cost to the state of \$1 million or more or to any municipality of \$100,000 or more, or, in the judgment of the Governor's Office, the Office of Policy & Management, or the agency, based on public comment received, the potential regulation presents a substantial shift in policy or is anticipated to place substantial burdens on citizens or on the private sector.
14. This Order shall not apply to agencies with executive heads who do not report directly to the Governor (for example, agencies within the Office of Governmental Accountability); however, such agencies are encouraged to voluntarily comply with the provisions of this Order, and my office will work with such agencies as requested.

This Order shall take effect immediately.

Dated at Hartford, Connecticut this 16th day of October, 2013.


Dannel P. Malloy
Governor

By His Excellency's Order


Denise Merrill
Secretary of the State



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37	Claims Commissioner	J. Paul Vance, Jr.	Paul.Vance@ct.gov	
38	Comptroller			
39	Criminal Justice Commission			
40	State Elections Enforcement Commission	Shannon Kief	Shannon.Kief@ct.gov	(860) 256 - 2940
41	Ethics	Cynthia Isales	Cynthia.Isales@ct.gov	860-263-2389
42	Firearms Permit Examiners	Susan Mazzoccoli	susan.mazzoccoli@po.state.ct.us	(860) 256-2977
43	Freedom of Information Commissioner	Colleen Murphy	colleen.murphy@ct.gov	(860) 566-5682
44	Human Rights & Opportunities Commission	Tayna Hughes	tanya.hughes@po.state.ct.us	(203) 579-6246
45	Judicial Review Council	Scott Murphy	Scott.Murphy@ct.gov	
46	Judicial Selection Commission	Ann Gimmartino	ann.gimmartino@ct.gov	(860) 256-2957
47	Medicolegal Investigations	Todd Fernow	Todd.fernow@law.uconn.edu	
48	Properties Review Board	Brian Dillon	brian.dillon@ct.gov	(860) 713-6403
49	Psychiatric Security Review Board	Ellen LaChance	Ellen.Lachance@ct.gov	
50	Secretary of the State	Jamie Spallone	James.spallone@ct.gov	
51	State Librarian / Library Board	Ken Wigglin	kendall.wlggin@ct.gov	
52	Teachers' Retirement Commission	Darlene Perez	darlene.perez@ct.gov	
53	Workers' Compensation Commission	John Mastropletro	john.mastropletro@ct.gov	
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