

NJBIA

AT ISSUE *By David Brogan, Vice President*

Common Sense Comes to Trenton

When Chris Christie cited regulatory reform as a priority for his Administration, many of us were hopeful, but also skeptical that real change could take place. Past Governors talked about improving the rulemaking process, balancing economic growth and environmental protection, and recognizing the impact rules have on business, but major reform was not achieved. Until now.

Governor Chris Christie, Lt. Governor Kim Guadagno and NJ Department of Environmental Protection (DEP) Commissioner Bob Martin are heading a formidable team that is making real progress on regulatory reform. The Governor outlined the mission with a series of executive orders to freeze pending rules and implement common sense reforms. The Lieutenant Governor led the Red Tape Review Group, and Martin was not only a member of the group but ultimately took the helm of the single most significant regulatory agency in the state.

The Governor mandated that new rules should be developed using common sense principles, such as meaningful economic impact analyses and basing them on sound science. The reform group's report not only made recommendations on changes to the rulemaking process but leveled direct criticism of "rules that appear to offend common sense." We also saw the willingness of a commissioner to tackle unreasonable regulations head on.

The Legislature too, has seen the need for changes. A package of bills sponsored by Assemblyman John Burzichelli make some sweeping reforms which limit the use of guidance documents, limit state agencies' ability to arbitrarily write rules that are stricter than federal standards, create a streamlined process for substantive rule changes based on public comments, and create a more rational process for dealing with contested cases.

Clearly, it is a new day in Trenton.

One of the most significant changes came in June, when Martin overturned one of the most ill conceived anti-business regulations of the past decade—a 2007 rule providing 24-hour/seven-days-per-week public access to facilities fronting tidal waterways. Traditionally, the public-access rule was applied primarily to properties along the state's beaches, but the new DEP rules extended it to all tidally flowed waterways, impacting hundreds of industrial facilities, utilities, marinas and other businesses along rivers and back bays.

For most, providing public access violated homeland security rules or presented an insurmountable safety or liability issue. For these businesses, the DEP would simply charge them a fee to provide access elsewhere, making the rule nothing more than a tax increase on businesses. This tax was completely arbitrary, ranging from tens of thousands to millions of dollars, and could be imposed every time a business needed a permit. It truly was the poster child for regulations that made New Jersey businesses wish they were located elsewhere.



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For three years NJBIA led the charge to repeal this rule, and until the change in administration, the prospects looked bleak. But Martin outlined a common sense approach to public access by immediately exempting companies subject to homeland security requirements, ports, and dredging activities from the rule.

These changes appear to represent a significant change in attitude where arbitrary and punitive rules are not imposed and the practical and fiscal impacts that regulations have on business will be analyzed. And don't expect efforts toward broader regulatory reform to be solely dominated by the Administration, the Legislature will have a significant role as well.

While we are still in the early stages of the new administration and nothing is guaranteed, it is fair to say that common sense has finally come to Trenton. Let's hope it decides to stay a while. **NJB**