MAC S. DUNAWAY
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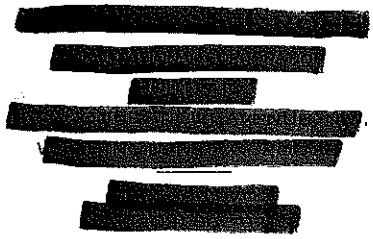


July 9, 2014

VIA First Class and Electronic Mail

Beth McLaughlin
Chief of Staff/General Counsel
Massachusetts Department of Public Safety
One Ashburton Place
13th Floor, Room 1301
Boston, MA 02108

Re: DPS Hoisting Regulation, Preemption

Dear Ms. McLaughlin:

Thank you for meeting with us on July 1 to discuss industry concerns about the Hoisting Machinery Regulation. We appreciate the time that you and Mr. Gatzunis and others were able to give us and it was helpful to learn more about the background of the regulation and several of the practical aspects of its implementation. The primary purpose of this letter is to follow up on your invitation for us to explain more fully our position that the Hoisting Machinery Regulation as applied to forklift operators is preempted by 29 C.F.R. §1910.178 (l), which is the federal OSHA regulation dealing with the training and qualifications of operators of powered industrial trucks.[1]

In our view, the Supreme Court's opinion in Gade v. Solid Waste Management Association, 505 U.S. 88 (1992), is directly on point and dispositive. Rejecting arguments espousing a narrower scope of preemption for "dual impact" statutes under section 18 (b) of the OSH Act, Gade held that "the OSH Act precludes any state regulation of an occupational safety or health issue with respect to which a federal standard has been established, unless a state plan has been submitted and approved pursuant to § 18(b)." Gade at 102.[2] OSHA's regulation at 29

[1] For purposes of our preemption analysis, it makes no difference whether the focus is on the statute pursuant to which the regulations were promulgated, the regulations themselves, or the application of the regulations to forklift operations. In our view, any of these embodiments or applications of state law is equally preempted.

[2] Gade cited the 1st Circuit's opinion in Associated Industries of Massachusetts v. Snow, 898 F. 2d 274, 279 (1st Cir. 1990), as one of the "decisions in which other Courts of Appeals have found the OSH Act to have a much narrower pre-emptive effect on 'dual impact' state regulations." Gade at 96.

C.F.R. §1910.178 (l) is a federal standard governing the occupational safety issue of the training and qualification of operators of powered industrial trucks. Therefore, under Gade, Massachusetts may not enforce regulations dealing with the training and qualification of operators of powered industrial trucks without OSHA approval under section 18 (b).

Section III of the Gade opinion addressed specifically "whether a dual impact law can be an 'occupational safety and health standard' subject to pre-emption under the Act." id. at 105, concluding as follows:

> In sum, a state law requirement that directly, substantially, and specifically regulates occupational safety and health is an occupational safety and health standard within the meaning of the Act. That such a law may also have a nonoccupational impact does not render it any less of an occupational standard for purposes of pre-emption analysis. If the State wishes to enact a dual impact law that regulates an occupational safety or health issue for which a federal standard is in effect, § 18 of the Act requires that the State submit a plan for the approval of the Secretary.

Id. at 108. Although the Hoisting Machinery Regulation may be a "dual impact" regulation in some respects, it also substantially and specifically regulates occupational safety and health, since its requirements apply overwhelmingly to employers and employees in their employment capacities.

Gade recognized that "state laws of general applicability (such as laws regarding traffic safety or fire safety) that do not conflict with OSHA standards and that regulate the conduct of workers and nonworkers alike would generally not be pre-empted." Id. at 107. But the Hoisting Machinery Regulation does not regulate the conduct of nonworkers and it does not "regulate workers simply as members of the general public." Id. Rather, it regulates them only in their capacities as operators of hoisting machinery. The Hoisting Machinery Regulation is not a law of general applicability within the meaning of Gade.

In this connection, we recognize that the 2nd Circuit's opinion last year in Steel Institute of New York v. City of New York, 716 F. 3d 31 (2d. Cir. 2013), held that the City of New York's regulations that govern the use of cranes, derricks, and other hoisting equipment in construction and demolition were not preempted by OSHA's crane regulations. Finding that Gade controlled the analysis because federal standards were in effect, the court nonetheless held that "[t]he Gade exception saves the City regulations from preemption because they are of general applicability." Id. at 38. In explaining this conclusion, the court stated that the regulations were not directed at workplace safety, but rather applied all over the city, indeed:

> A salient feature of the City's regime is that crane activity confined to a workplace is *expressly excluded* from the scope of the City regulations: the regulations do not apply "to cranes or derricks used in industrial or commercial plants or yards" (unless used for construction of the facility itself).

Id. (emphasis in original). The court also noted OSHA's position that local ordinances and building codes whose primary aim and effect is public safety rather than occupational safety are not preempted. Id. at 40.

The 2d Circuit's opinion, however, does not support a finding that the Hoisting Machinery Regulation promulgated by DPS is a law of general applicability. Whereas New York City's crane regulations expressly excluded the workplace from its scope, the DPS regulation has no such exclusion, imposing requirements on hundreds of employers and employees whose only activities take place at worksites where the public is not present. Moreover, the Hoisting Machinery Regulation is not a local ordinance tailored to a local public safety issue, but rather a state-wide regulation covering the same issue as an OSHA regulation, i.e., precisely the sort of state requirement that section 18 (b)'s state-plan approval process was intended to address. Finally, compared to crane operations that span several blocks on congested city streets, the great majority of forklift operations take place away from the public, presenting occupational health and safety issues only. Gade held that state-wide laws governing the training and qualifications of hazardous waste workers are not laws of general application notwithstanding "some additional effect outside of the workplace." Gade, supra at 107. The same must be true for state-wide laws governing the training and qualifications of industrial truck operators.

Unfortunately, the Hoisting Machinery Regulation's exemption for "industrial lift trucks . . . used exclusively on company property" does not cure the preemption problem. Obtaining the exemption requires complying with another set of occupational safety and health requirements, such as having a hoisting supervisor and an inservice training program, that merely deal in a different way with the same issue: the training and qualification for operators of powered industrial trucks. If anything, the exemption's multiple references to "company" and "employees" emphasize that the regulation as a whole targets the occupational setting, not the general public.

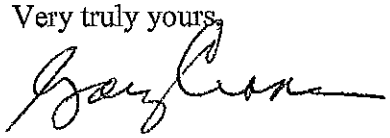
As discussed during our July 1 meeting, there is a particular irony concerning the exemption as it applies to the service technicians—who are typically employees of forklift dealerships—who repair, maintain and service forklifts. These employees only "operate" forklifts in the limited sense associated with their repair, maintenance and service activities and they perform these employment duties at worksites away from the public. Yet, because their work is usually performed off-site at the forklift owner's or lessee's place of employment, they presumably cannot qualify for the exemption because they cannot be assured that all of the worksites they visit will have a hoisting supervisor in place. (It is less clear whether the exemption also requires that they receive their training from the employer whose workplace they are visiting—if so, this is a second insurmountable obstacle to qualifying for the exemption, because they work at multiple sites.) This aspect of the Hoisting Machinery Regulation shares in the larger preemption problem, but is an especially egregious consequence.

We hope the foregoing discussion, brief as it is, gives you a clearer picture of our views on preemption as applied to this regulation. We understand that DPS felt it had no choice but to implement the statute passed by the legislature and that DPS attempted to

provide special consideration for forklift operations. As explained herein, however, we believe that there remains a clear preemption problem notwithstanding the exemption.

We would appreciate hearing your response to our analysis, including any disagreement you have with our reading of Gade or your views on other cases that you may find relevant. If you agree that there is a preemption issue, we would like to explore with you possible solutions, such as clarifying guidance of some kind from DPS, which might address the situation with minimal disruption. Thank you again for the meeting and your consideration and feel free to contact us at any time.

Very truly yours,



Gary E. Cross

[redacted]

Cc: Thomas Gatzunis
Robert Rio (electronic mail only)
Tim Wilkerson (electronic mail only)
Patrick Huntington (electronic mail only)

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July 11, 2013

Thomas G. Gatzunis, P.E.
Commissioner
Department of Public Safety
One Ashburton Place, Room 1301
Boston, MA 02108

Re: Comments on Proposed DPS Hoisting Regulations 520 CMR 6.00

Dear Commissioner Gatzunis:

Associated Industries of Massachusetts (AIM) is pleased to comment on the above proposed regulation. AIM is the largest trade association in Massachusetts, with over 5000 member companies, many of whom will be impacted by these proposed regulations.

The current proposed regulations incorporate changes resulting from public comments submitted December, 2012 on an earlier draft of these proposals. AIM submitted significant comments during that process and appreciates the fact that the Department incorporated many of those changes into this proposal. AIM also appreciates that the Department allowed for additional public comment before finalizing the regulations.

AIM also participated in the public hearing for these proposed regulations on July 8th and some of our comments expand upon and support the comments we heard from others during that hearing.

As stated in our December 2012 comments, these proposed regulations are far reaching and represent a regulatory program that is not only unique to Massachusetts but at times also more extensive than OSHA requirements for similar equipment. The existing regulations have created enormous confusion in the regulated community, as many companies were unaware of the licensing requirements that have been part of the law for many years, thinking that OSHA controlled forklift-type operations in their facility. While DPS has been flexible working with companies unaware of the current law, and these proposed regulations attempt to streamline the existing law, we believe there could still be confusion in the regulated community.

Before getting into specific comments AIM would like to make a few general observations.

GENERAL COMMENTS

Throughout the public hearing on July 8th, AIM heard a consistent theme: to the extent the proposed regulations overlap with OSHA, the proposed regulations must be consistent with and reference these OSHA requirements as much as possible. This includes things like definitions and other basic requirements.

It is particularly true in areas where DPS has decided to enact more stringent regulations and requirements than OSHA. From a practical standpoint, DPS should make it clear that the baseline is a referenced OSHA standard and then, when appropriate, further make it clear that state specific requirements are added to those regulations. Reading the current proposed regulations it is often hard to tell if the requirement is different from the OSHA requirement or the language merely restates the OSHA requirement. Under no circumstances should DPS attempt to rewrite what are essentially the same regulations and requirements, using terms that are unfamiliar to the practitioner or defined differently under OSHA and state regulations. Knowing where OSHA regulations end and state-only regulations begin would go a long way to a uniform interpretative standard for the regulated community, alleviating confusion.

Also, as a general practice we urge the Department to be more flexible when it comes to the requirement that English be the language of choice for things likes examinations. While we certainly understand the need for all operators to understand general signage which is often in English, the Registry of Motor Vehicles offers written exams in many languages, while the DPS offers license exams only in English. We believe this to be discriminatory as many forklift operators do not use English as their first language, eliminating some possibilities for jobs.

Finally, we urge the Department to continue to partner with groups like AIM to do outreach on hoisting safety and compliance with these regulations. This could also include an expanded Q&A section on your website.

With those general comments in mind, we would like to offer some specific comments, some of which are similar to our comments in the previous iteration of the proposed regulation.

SPECIFIC COMMENTS

Section 6.01 - General Provisions, Scope, Definitions, Standards Adopted

Section 6.01(2) - Definitions

"Company Property" – The current proposed definition is as follows:

> Property which is owned or under the care and control of a tenant company under a lease or rental agreement. No operation shall occur on any public or a private way, excluding Company Property.

Although this definition changed from the earlier version to add the second sentence, we are still concerned that the definition does not address a company that has property separated by a public way that needs to be crossed by the equipment on occasion, even though it appears the sentence addition tried to address such an issue. This is very common occurrence.

As before, we believe the intent of the regulation is to apply to the operation of hoisting equipment and not to the incidental movement across a street under its own power. Therefore, as before, we suggest a clarification that would alleviate any concern over interpretation:

For purposes of this definition, incidental crossing of a public or private way between Company Properties by hoisting machinery under its own power are not considered to be operation of the hoisting machinery

Section 6.02 - General Administrative Provisions, Including Requirements for Licensure, Apprentice Licenses, and Renewals

Section 6.02(2)(b)(5) – This section requires a valid driver's license as a prerequisite for a hoisting license. This is a very onerous provision, especially for companies that operate in cities with public transportation. While it is our understanding that this provision would not apply if a company elected the Company Exemption under Section 6.06, it would be onerous if the company could not use that exemption.

There are many reasons why a person would not have a driver's license, particularly if they do not need a car to get to work. Requiring such a license (which is not a requirement under OSHA) we believe will result in restrictions which could result in job losses.

Section 6.02(3)(a)(1)b – This section requires that during the written portion of the hoisting exam, the applicant must comprehend and interpret all placards, operation manuals, safety codes and other information pertinent to safe hoisting operations in the English language. Further, in Section 6.02(3)(b)(4), if an applicant is required to take a practical examination, they must be able to understand English.

Although we understand the desire to balance safety with inclusion of other languages, as mentioned earlier, the English only requirement on license exams has been a source of frustration for many members. Not surprisingly, there are many operators for whom English is not their first language and we urge the DPS to work with these groups to help accommodate them with the goal to be inclusive of all operators who want to work in a safe environment despite their limited knowledge of English. Further, we urge the Department to delete any requirement that exams be conducted in English only.

Driver's license exams are offered in many different languages. This could result in a case where an applicant is able to drive a car but not a forklift. We urge the DPS to work with the State Department of Transportation to make these outreach efforts consistent and perhaps work with diversity groups to get their input. The Department of Environmental Protection has worked with

dry cleaners to offer environmental guidance and forms in Korean and has found compliance to be much higher when forms and other materials are offered in native languages.

Section 6.02(3)(a)2 - The 90-day period for re-examination is too long and can present a hardship for employers trying to fill a position requiring a hoisting license. There is no valid reason for this length of time. The waiting period should be reduced to 7-14 days.

Section 6.04 - Continuing Education and Training Facilities

Section 6.04(2)(a) – In this proposal DPS license renewals are required every two years, while OSHA requires an evaluation and, if necessary, retraining every three years for forklift operators. DPS should align their requirements with OSHA to avoid confusion and extra work for employers.

Section 6.06 - Exempt Companies; Exemptions for Licensing Requirements, Pursuant to M.G.L. c. 146, Section 53

As before, AIM is mostly concerned about the exemption from these licensing requirements for those who operate exclusively on company property.

While Section 6.06 in general may help several larger companies avoid licensing multiple operators, AIM has heard from several members with just a handful of forklift type operators that aspects of this exemption are not broad enough to really allow companies to take advantage of this exemption. As a result, we believe the number of people who chose this exemption may be smaller than anticipated. Therefore, they will have to fully license each individual operator, a major expense for these small companies. However, we believe that with small changes in the exemption language, many more entities may be able to take advantage of the exemption.

For instance:

Section 6.06(a)(2) – The definition of companies operating solely on company property states the following:

> Companies Operating Solely on Company Property: A company which operates Hoisting equipment Machinery specifically limited to industrial lift trucks, Fork Lifts, overhead cranes and other Hoisting equipment Machinery specifically authorized by the Department and used exclusively on company property.

This definition is not in-sync with the requirements of the in-service training under Section 6.07(4) as we understand them (see comment below), which sets out the requirements for each class of license. It would appear that the restrictive nature of Section 6.06 (a)(2) should be expanded to be consistent with Section 6.07(4).

Section 6.06(b)(1) - The proposed regulation states:

The company must have at least 1 supervisory employee on site at all times of operation who holds a License for the equipment being used, issued by the Department under M.G.L. c. 146, Section 53 and is designated as the responsible person in charge of Hoisting equipment Machinery during that period of operation

As we stated in our earlier comments, this requirement places an undue burden upon an employer and may be the single biggest reason most companies opt to license all their operators instead of using this exemption. This section makes no provisions for vacations, or off shifts where a supervisor may not normally be on site, especially impacting small businesses that may not have a large supervisory force.

Having an employee onsite at all times is overly restrictive and results in no increase in safety. If a company operates 24/7, this would likely result in at least 6 or more operators being licensed. While we understand the rationale is so a designated person is available and responsible should an accident occur, in reality this provision makes little sense. It is also out of step with other regulations that allow remote or on-call responders and designated personnel. Under these regulations an operator must be appropriately licensed by the company. There is absolutely no additional safety need for a supervisor to be on-site at all times monitoring a licensed operator.

In this day of instant communication, it matters little where responders are located – even hazardous material first responders are not required to be on-site at all times – just available as on-call. Allowing the designated person to be available on-call will not compromise public safety.

Therefore we strongly suggest that in order to minimize cost and confusion, we suggested that the section be rewritten to read:

(1) The company must have at least one supervisory employee who holds a license for the class of equipment being used, issued by the Department under 520 CMR 6.04 and is designated as person in charge of hoisting machinery.

Also, we urge the department to allow companies that have more than one site - such as warehouse operations, to designate one person for the entire company. Under the current definition each warehouse will need multiple licensed operators to cover all shifts and each location could potentially have a licensed supervisor. This is not conducive to streamlined government regulations. In fact, it will create confusion. A better safety option is to have a singular safety voice for the entire hoisting operation. Since the company has to have a designated in-service program approved by the Department, the Department will know what sites are under the supervision of any particular employee.

Section 6.07 - In-Service Training Program for Exempt Companies

Section 6.07(1)d – This section outlines the list of the type of equipment, including model, make and serial number, to be used in the company's In-Service Training Program

It would appear that the make, model, number and particular serial number would be superfluous. If the type of equipment falls under the requirements we can see no need for specific serial numbers, particularly if equipment changes regularly.

Section 6.07(4) - As the proposed regulation is written, this section outlines the training requirements for In-Service Training Programs. The requirements for Class I licenses are listed. However, every other class of license has been crossed out of the regulations, indicating that in-house training programs cannot be used for any other Class license. While this may be a formatting issue it is our understanding that exempt companies may train operators for any classes of hoisting equipment used on-site and we urge the DPS to clear up any confusion.

Exempted companies with approved In-house Training Programs should be able to train on any of the common hoisting equipment in their operations (i.e., overhead underhung hoists, forklifts, manlifts, etc.), and we believe this to be the original intent of the regulation.

Section 6.11 Operation of Hoisting Machinery; Accident Reporting

Section 6.11 (4) Notification/Investigation. The proposed regulation states:

> Notification. Any incident which results in Serious Injury, property damage, or any condition that is necessary for the preservation of the public health or safety at a site where Hoisting Machinery is operational must be reported by the Licensee operating the Hoisting Machinery or owner or owner's representative to the Department through the Department Incident Hotline at (508) 820-1444 within one (1) hour from the time that the incident occurred or was discovered.

Several concerns arise out of these requirements:

a. The "property damage" reporting requirement does not place any threshold criteria for the reporting (i.e., dollar value), yet it appears that the rest of the incidents listed (serious injury or any condition that is necessary for the preservation of the public health or safety) are qualified as very serious incidents. A fork lift can cause minor damage without causing injury or a safety issue. While we certainly understand DPS' need to track offenders who may routinely cause such issues, given the gravity of the other items listed it would appear that the DPS is really only looking for reports of significant events.

   Since exempt companies in particular are only operating on their own property, "property damage" will be confined to their facility. Also, for the same reason, there is little threat to public health or safety that would not be reportable under other regulations (i.e., chemical spill). Therefore, we believe that the DPS should better define "property damage" as something like: "property damage resulting in significant structural or similar damage to a structure on company property or damage to public property requiring reporting to local authorities."

b. There is a one-hour reporting requirement for any serious injury, property damage, etc. This far exceeds OSHA requirements which expect employers to report when 3 or more employees are hospitalized or there is a fatality with a reporting period of eight (8) hours. The one-hour requirement appears to be very short when one considers the immediate actions that need to be taken following a serious injury or property damage (especially given the definition vagueness).

   In times of crisis and potential safety issues, the last thing an employer needs is two sets of reporting regulations. Understanding this, it is requested that the DPS strike this provision and rely upon the Federal OSHA requirement of 8 hour notification for incidents that involve 3 or more employees that are hospitalized or a fatality.

AIM supports the Department in its goal of a safe work environment, particularly when it comes to proper training and documentation. However, as you review these and other comments we urge the Department to consider those companies that operate in Massachusetts and the potential expense they will be subject to in complying with these proposals. We urge the Department to make these regulations as seamless as possible, consistent with OSHA and other standards. This, we believe will result in reduced paperwork for both the DPS and regulated entities and ultimately better compliance and a safer work environment.

As always, we are willing to meet with the DPS at any time to discuss these comments. [redacted]

Sincerely,

Robert A Rio

Robert A. Rio, [redacted]

aim
Leadership is our business

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VIA EMAIL TO RICH.BIZZOZERO@STATE.MA.US

December 10, 2014

Rich Bizzozero
Executive Director TUR Administrative Council
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Re: Propose Regulations to Increase TURA Compliance Fees

Dear Mr. Bizzozero:

AIM appreciates the opportunity to comment on the proposed regulations which would raise TURA compliance fees. The comments below are similar to our comments submitted to the TUR Administrative Council on September 19, 2014.

AIM is the state's largest nonprofit, nonpartisan association of Massachusetts employers. AIM's mission is to promote the well-being of its thousands of members and their employees and the prosperity of the Commonwealth of Massachusetts by improving the economic climate, proactively advocating fair and equitable public policy, and providing relevant, reliable information and excellent services. AIM has many members who would be directly impacted by this fee increase.

This proposal would raise base fees, per chemical fees and maximum fees approximately 50% (with some mitigation for firms employing less than 100 employees). This will generate approximately 4 million dollars in annual fees, up from approximately 2.8 million dollars per year.

AIM has a long history working with executive agencies, including DEP, EOEEA and others to ensure they are funded appropriately and often that funding mechanism included instituting or raising fees. AIM is a charter member of the DEP Fees Advisory Committee, a bipartisan committee which established DEP's first compliance fees decades ago and we have been active members of that committee ever since. During that time AIM, after proper discussion, has supported virtually all the funding increases brought before the committee, including a recent 2.5 million dollar increase in DEP compliance fees that required a legislative change to allow DEP to retain some of the revenue.

We supported these increases for two reasons: they were legitimately connected to the increased cost of services rendered to the payer and they were consistent with our core belief that the user of services should pay the cost of providing those services. They were also consistent with the law.

Unfortunately we do not believe the current proposed TURA fees stand up to such scrutiny.

Even though the fee increase nets a modest amount of money overall, they are very large for individual filers. This is primarily due to the fact that as the number of TURA filers is dwindling, the proposal calls for each user to pay increased fees to sustain the TURA program.

TURA fees were established at another time in Massachusetts' history, a time when the number of TURA filers was enough to sustain a robust program encompassing three agencies (DEP, OTA, and TURI), each with its own mission. It was a bold undertaking, and the educational programs were robust and well attended. AIM partnered with all these agencies to bring high quality information to members and non-members.

But times have changed. As with the EPA Air Title V program fees, over time the notion of "polluter pays" became anachronistic. As companies exited Massachusetts or exited the use of materials which generate the fees, the fee income fell, resulting in fewer companies paying the fees. In fact, significant declines in filers have occurred virtually every year in the TURA program.

At last glance, the number of TURA filers in Massachusetts was down to under 500 companies, with some of the companies on the list only because it is *their business* to manufacture or distribute TURA listed chemicals or use TURA listed chemicals as a requirement of a DEP or other environmental permit, resulting in a never ending cycling of paying fees just to operate here. Clearly, 500 companies are not enough to support the programs of the past and just raising fees on a dwindling number of survivors is not a good sustainable strategy.

The real question, then, is not how to force existing and ever decreasing numbers of filers to pay for the same programs, but rather what path should the state's toxic reduction efforts take going forward to account for these reductions (which are likely to continue). That outside-the-box thinking is what is missing from the analysis in the background document.

AIM is not only troubled by the lack of vision in the document but also by what appears to be a disregard of toxics reductions partnerships by other agencies.

For instance, the background material states that DEP is not willing to expend resources to enforce against TURA non-filers. As you know, AIM has always supported enforcement of all environmental regulations as a top priority in order to create a level playing field. Given DEP's role in enforcement of multiple environmental regulations, it seems disingenuous that DEP has abdicated their responsibility on suspected TURA scofflaws. Particularly after the recent fee increase, DEP should have an adequate enforcement budget whether or not they receive one penny from TURA fees and it should not be that difficult or expensive to integrate TURA enforcement into DEP's current enforcement actions. It appears to us that the issue is not lack of resources but lack of desire.

With regards to OTA and TURI, the same analysis applies. AIM has worked with both OTA and TURI many times and has always found each to be valuable and professional. Many of our members have taken advantage of both organizations.

However, it appears that both are struggling to find acceptance in the new world, where toxics use reduction has been overtaken by sustainability activities and continued products substitution - and perhaps both may need a mission recharge. Keeping toxics reduction in a separate bucket, as this law was designed to do, is not the way the business world operates anymore.

For instance, the background document states that one of the uses for increase revenues is to help "growing sectors" like biotechnology and pharmaceuticals. But why are existing sectors that aren't growing paying for this outreach? Essentially, this is a wealth transfer from one sector to another. It is even unclear if those sectors are really in need of the type of outreach that OTA and TURI provide. These sectors should have the resources available to fund their own projects without being subsidized by others. Even if worthwhile results are occurring, funding should not be from a captive group of TURA filers.

If these and similar programs are valuable they should be funded by state agencies that have responsibility for these issues, including economic development agencies, not TURA filers. At some point the administration needs to take a long hard look at TUR type programs and decide if they are worth funding regardless of TURA fees.

In addition, while the Administrative Council took great pains to mitigate the increase for smaller companies, there appears to be no analysis of the impact on companies that have no alternatives but to use TURA regulated chemicals - a flaw that we believe should be fatal to this proposal.

Finally, the fee increase appears not to be supported by legislation. Section 19 of the Chapter 211 clearly states that the TURA fees shall be raised annually based on increases in the Producer Price Index. That is an absolute requirement. The fact that fees have not been raised in decades does not give program administrators the same authority to raise fees all at once based on a cumulative increase in the Producer Price Index.

The authorizing legislation governing TURA fees is different from authorizing language governing other agencies, particularly DEP, which has broad flexibility in establishing fees. While some have used the PPI or CPI to justify increases after many years, the authorizing language did not stipulate yearly increases. Therefore, after many years, those agencies could raise fees by a rather large percent. Here there is only one way to raise fees and that is annually. This "use it or lose it" requirement precludes a fee increase this large.

In sum, AIM appreciates all the cooperation and hard work that DEP, OTA and TURI have done over the last decades to help Massachusetts industries. At the present time, AIM opposes these fee increases until a top to bottom review of the impact such a fee increase would have on all businesses in the Commonwealth. The notion that Massachusetts industries are producing or using a toxic brew of dangerous chemicals is outdated and completely ignores reality. There needs to be a realization that the program must change and perhaps that means integrating toxics programs into existing programs, as so many companies have done.

Thank you for the opportunity to comment on this proposal. AIM looks forward to working with you and others to continue our relationship.

Should you have any questions please do not hesitate to contact me [redacted]

Sincerely yours,

Robert A Rio

Robert A. Rio, [redacted]

[redacted]

June 29, 2015

His Excellency Charlie Baker, Governor
Commonwealth of Massachusetts
c/o Associated Industries of Massachusetts
One Beacon Street, 16th Floor
Boston, MA 02108

Dear Governor Baker:

On behalf of Cummings Properties, LLC, we are writing relative to Executive Order No. 562. We applaud your initiative in reviewing regulations that are considered unnecessarily burdensome and accept your invitation to offer our industry perspective, as a Massachusetts-based commercial real estate firm. We have outlined certain regulations within the Executive Department that we request be revisited due to their adverse effects on business practices within the Commonwealth.

Items within the Executive Office of Energy and Environmental Affairs

Regulation: 220 CMR 8.00: Department of Public Utilities → Sales of Electricity by Qualifying Facilities and On-Site Generating Facilities to Distribution Companies, and Sales of Electricity by Distribution Companies to Qualifying Facilities and On-Site Generating Facilities
Recommendation: *Revise*. The interconnection process would benefit from having: (1) a more simplified and expedited application process; (2) better tracking of review/approval timelines; and (3) an enforcement mechanism to encourage distribution company compliance with interconnection timelines.

Regulation: 220 CMR 14.00: Department of Public Utilities → The Unbundling of Services Relating to the Provision of Natural Gas
Regulation: 220 CMR 30.00: Department of Telecommunications and Energy → Requiring Private Investor-Owned Electric Companies Operating within the Commonwealth to Adopt Rate Structures Based on Peak Load and the Differential Pricing and Relating Costing Methodologies
Recommendation: *Revise*. The challenge in the above two regulations is the same: verbose regulations that do not provide direct guidance in regards to pricing. Further, nothing in the regulations requires the DPU to explain the basis for its pricing structures.

Regulation: 220 CMR 18.07: Department of Public Utilities → Net Metering → Net Metering Capacity
Recommendation: *Revise*. The three percent cap is too low, particularly given that there is no distinction between a facility that generates electricity for use within the facility's own site (i.e., is not or is rarely exported to the grid) versus those facilities that actually export most or all generation onto the local distribution grid.

Regulation: 310 CMR 9.00: Department of Environmental Protection → Waterways
Recommendation: *Revise*. The process for issuance of a General Nonwater-Dependent License for historically filled tidelands is incredibly cumbersome. In contrast, the Simplified Waterways License

[redacted]

criteria and application procedure are easier and less expensive. Rather than having distinct processes, it seems resources would be better allotted if all applications followed the simplified approach.

Items within the Executive Office of Housing and Economic Development

Regulation: 248 CMR 10.06: Uniform State Plumbing Code → Materials
Recommendation: *Revise*. The use of thermoplastic sewer pipes and drainline pipes should be permitted in commercial structures, in addition to cast iron pipes.

Regulation: 248 CMR 10.10: Uniform State Plumbing Code → Plumbing Fixtures.
Recommendation: *Revise*. Practically speaking, many business uses conducted within commercial buildings do not need a bathtub or shower. This regulation often requires businesses to incur wasteful expenses to either install unnecessary plumbing fixtures or to commence the costly process of applying for a variance from the Board of State Examiners of Plumbers and Gas Fitters.

Items within the Executive Office of Labor and Workforce Development

Regulation: 430 CMR 5.00: Department of Unemployment Assistance → Employer Requirements
Recommendation: *Simplify*. Unemployment reporting requirements have become burdensome and riddled with multiple subparts. Furthermore, the electronic process for filing does not currently allow for uploading attachments, which is a critical component for easing the administrative burden of such a filing.

Regulation: 452 CMR 8.00: Department of Industrial Accidents → Office of Investigations
Recommendation: *Revise*. Although it is important that employers be investigated to ensure that proper coverage has been obtained, employees who have filed worker's compensation claims, especially serial claimants, should, in the interest of fairness, be subject to the same investigative process.

Unemployment Insurance Fraud. This area seems to be lacking regulation. Abuse of unemployment benefits is already substantial and seems to be on the rise. The system would benefit from having simple governing regulations. Resolving a claim against an employee who has fraudulently collected benefits is excessively convoluted, as it requires the involvement of multiple agencies – Massachusetts Department of Revenue, Social Security Administration, the state Department of Corrections, and so on. A streamlined and integrated process and elimination of redundancies would reduce costs while discouraging fraud.

We urge you to focus your administration's attention on these very important issues, and thank you for your consideration of our suggestions.

Sincerely,

[redacted]

Dennis A. Clarke

[redacted]

July 7, 2015

Mr. Richard Bizzozero
Executive Director
Office of Technical Assistance and Technology
100 Cambridge Street, Suite 900
Boston, MA 02114

Re.: Delisting the Use of Asphalt

Dear Mr. Bizzozero,

Thank you for your time the other day when we discussed the possibility of having the "use" of asphalt delisted for the Hot Mix Asphalt production industry (HMA Industry). The information you gave was helpful and warranted me to further research the process of pursuing the task of delisting a substance. Examining TURI's Decision-Making under TURA document and Chapter 211 of the MA General Laws provide valuable direction.

Reading through the Decision-Making under TURA document, as expected, there is a weighted reliance on the Science Advisory Board to move a substance on or off the TURA list through its purview of expert judgement and a modified Delphi method. The process diagrams for categorizing substances or for adding or deleting a substance show the first step is initiation of categorizing or adding/delisting of a substance.

In the HMA Industry's case however, it is not the desire to categorize, delist or add any substance, but rather, consider a use exemption due to a unique circumstance. It's our request to directly solicit the Advisory Committee or MassDEP to review TUR policy and determine whether the regulation as it stands needs modification or if the law can be applied to the industry in a segment wide basis.

The HMA Industry is mostly restricted by the ultimate specifier - the Federal DOT. They oversee specifications of MassDOT which in turn is referred by the 351 cities and towns of the Commonwealth. Furthermore, designers and architects refer to these specifications for state, local, commercial and private projects. The HMA industry also makes paving materials which are specified by the Department of Defense, Federal Aviation Administration as well as other federal agencies. Therefore it is requested that MassDEP, Advisory Council or the any governing administration determine that the user segment of the HMA industry be exempt under Chapter 211 Section 15 Performance Standards (F) which states:

> ***"A production unit otherwise covered by a performance standard shall be exempt from such standard if compliance would adversely affect the toxics user's ability to produce its product in conformance with product specifications of the United States Food and Drug Administration, Department of Defense or any other federal agency."***

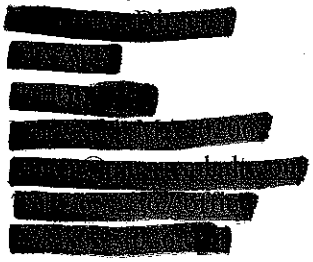
The HMA Industry is at its limit as to the amount of toxics it can reduce by the caveats of "process, use, or otherwise use". Under the direction of the DOT, there is no substitute for asphalt binder which contain inherent toxic substances. Lastly, HMA is the preferred product of the Northeast for its durability, ease of construction, recyclability and sustainability.

I wish to meet with you in the days to come to discuss this further to get a better understanding of the proper decision making body(s) interpretation of the cited section and how we can move this process in a meaningful manner forward for all parties involved.

I will follow up with you in the week to come.

Best regards,

James Reger



Delisting the Use of Asphalt for Reporting to the Toxic Use Reduction Program

Problem Statement

Asphalt mix producing facilities that meet regulation criteria report to the Massachusetts Department of Environmental Protection (MassDEP) under the Toxics Use Reduction (TUR) program for the substances, Benzo(g,h,i)perylene and Polycyclic Aromatic Compounds (PAC's). These substances are inherent in the binder material used to blend with aggregates and reclaimed asphalt pavement (RAP) for use in constructing pavements in private, commercial and agency settings.

Asphalt is specified by the awarding authority. Usually with the competitive bid marketplace there is an "or equal" caveat allowing construction products to be substituted provided there is equal performance and quality. With asphalt, however, there is no substitute that can be used to replace its binder characteristics. Therefore, it is requested to delist or conditionally exempt asphalt mix producers and/or the use of asphalt in the TUR regulations.

Background

Toxics Use Reduction Act (MGL c.21I) was passed in 1998 and from that legislation MassDEP developed the TUR regulations that mirrored the Federal requirement under the Environmental Protection Agency's Emergency Planning and Community Right-to-Know Act (EPCRA) - Toxic Release Inventory (TRI). The TUR program required entities to report if they met similar thresholds developed by the federal government.

A facility is required to file the **Toxics Use Reduction Report** if it meets ***all*** three criteria:

- was a Large Quantity Toxics User (LQTU), that is, the facility manufactured, processed or otherwise used a TURA-regulated chemical in excess of a reporting threshold in the reporting year; ***and***
- employed the equivalent of at least 10 full-time employees (FTEs) in the reporting year ***and***
- conducted ***any*** business in any of the activities described by the North American Industrial Classification System Codes (NAICS) which correspond to Standard Industrial Classification (SIC) codes 10 - 14, 20 - 39, 40, 44 - 51, 72, 73, 75.

Intent, Cause and Effect

The intent of the program has been a success and has over-exceeded its goal of 50% a reduction from 1987 quantities of toxic or hazardous byproducts generated by industry in the Commonwealth of Massachusetts. However, reporting patterns in the asphalt mix industry show that the amount of substances that are reported are dependent on the amount of finish product that is made. A reduction in use is strictly a cause and effect of the economy and contract letting in the private and public sector versus an innovative or efficient process that may have eliminated or reduced the reportable substances. As the preferred product, asphalt mixtures are specified for pavement construction in the northeast for many factors including speed of construction which has a low impact of traffic disruption, recyclability and sustainability for an effective life cycle, and cost competitiveness for economic benefit to the public.

Specification

The federal government and MassDOT is the procurement agency for 70 – 85 percent of the work of the reporting industry. This also includes all city and town contracting for the Commonwealth (Chapter 90). For commercial contracts, MassDOT specification is referenced by design consultants as the preferred product of choice because of its reliability, mechanical design and years of use in the Commonwealth.

With the volatility of commodities in the industry, RAP use has increased to the point where MassDOT has allowed up to 25% (avg.) by weight to be recycled. Decreasing the virgin asphalt and increasing RAP still trigger a reportable quantity of Benzo(g,h,i)perylene and PAC's because it is still part of the binder in the RAP.

No Viable Substitute

Removing the inherent reportable substances from the binder could be like taking links out of the chain of molecules that make the product whole - and may be impossible to do. Many academic institutions continue to research innovations in pavement design. In particular, UMass Dartmouth - Highway Sustainability Research Center continues to experiment with different bio-asphalts, i.e. swine manure extract, plant oils, etc. There are a lot of barriers for new products to enter the market as it takes a lot of time and effort by stakeholders and agencies alike to advance a product to be an approved quality product. More likely, bio-asphalts would not completely replace conventional asphalt as they are not cost competitive in the current economic climate.

Planning to Reduce

Under the TUR regulations, every 2 years, reporters are required to develop and certify plans by License Site Professionals (LSP's) that are trained to develop reduction plans. The plans developed by the asphalt mix industry tend not to show a decrease in asphalt use. The dilemma for the industry and for the TUR program is that if there is no substitute for a product that contains the reportable substance and that product is specified by another agency, how do you plan to reduce? Additionally, in a competitive bid market, to be more sustainable, manufacturers will tend to produce more product versus raise prices to lower demand and theoretically reducing the amount of product produced. The latter is clearly not the intent of the law nor the program. The intent is to reduce toxic use to a reasonable level to minimize the risk to public health or safety and/or the environment.

Expenses and Revenue

According to TUR Data™ RY 2012, there are nine (9) members of Massachusetts Aggregate and Asphalt Pavement Association that report to TUR. Of the nine, there are sixteen (16) facilities in total that report individually for Benzo(g,h,i)perylene and PAC's because of the use of asphalt. Depending on the amount of employees reported, the base **impact of each facility is assumed at (RY 2012) $4,050 for a total of $64,800 due to the Commonwealth of MA each year.** Submitting the reports carry a cost of $600/year on average. Certifying a reduction plan every two years can cost on average $600 for a yearly total cost for the industry reporters is $4,800. From RY 2000 to 2015 the industry will have paid approximately **$972,000 in fees to the state, $144,000 for reporting costs and $72,000 in consulting fees for a grand total of $1,116,000 over the last decade and a half.** Based on the 2013 TUR budget of $2,712,332 (DEP TURA Report 2012), the asphalt mix industry contributes 2.4% to it.

During the last MA Legislature session, amendments were past to allow MassDEP to increase fees as and when it sees fit for TUR. The program will most likely not daylight, therefore the costs will continue to rise. Passing the costs onto the consumer would be the logical solution yet with a competitive market, that may not be suitable. Based on a facility producing 150,000 tons/year the cost is $0.03/ton/year. Taking in consideration of industry average profit margins of 2-3%, every cent is essential.

Conclusion

- Finding a substitute for asphalt will take a lot of research and effort for agencies to accept bio-asphalts as a viable alternative.
- Planning to reduce is an unachievable goal for the asphalt mix industry and the TUR program.

- Requiring the asphalt mix industry to continue to report and pay fees with no benefit nor risk to the public health or environment makes the program ineffective and inconsistent with the intent of the law.
- The Federal TRI reporting system is the general register the industry uses to benefit the health and safety of the public and the environment.

Solutions

- Determine that the substances are considered an article of the product and therefore exempt under the article rule.
- Granting the asphalt mix industry a waiver by declaring there is no substitute for the inherent substances in asphalt.
- A conditional exemption is the most fair and equitable solution to the unique circumstance of one branch of government (MassDOT) is requiring a certain product and another branch (MassDEP) is charging a fee if it is used.

Key Elements of Advocacy's Model Bill

Every state has some form of administrative procedure law that governs the agency rulemaking process, and many states currently have provisions that pertain to regulations affecting small businesses and provide for regulatory flexibility. However, recognizing that some laws are missing key components that give regulatory flexibility its effectiveness, legislators continue to introduce legislation to strengthen their current systems.

"I think that our passage of a law requiring all South Dakota governmental agencies to complete and file small business impact statements whenever they promulgate new rules is one of the best things we have ever done for small business."
—Jerry Wheeler, Executive Director, South Dakota Retailers Association

Advocacy's model legislation is patterned after the federal regulatory flexibility law and contains the following five key elements: 1) a small business definition; 2) an economic impact analysis; 3) a regulatory flexibility analysis; 4) periodic review of existing regulations; and 5) judicial review.

Small Business Definition

It is important for "small business" to be defined by statute and for the definition to be consistent with how other laws and/or permitting authorities within the state characterize "small." If there is no such definition currently provided by statute, states generally use the number of employees and/or the gross annual sales of the entity to define "small business."

Economic Impact Analysis

Pursuant to most state administrative procedure laws, agencies are already required to prepare some form of economic impact analysis to determine how the proposed regulation will affect the entities being regulated. Segmenting out the impact on small business is a necessary additional step in the analysis because small businesses bear a disproportionate share of regulatory costs and burdens. By recognizing the cost of a regulation to small businesses and the differences in scale and resources of regulated businesses, agencies are able to craft regulations that consider the uniqueness of small businesses. As a result, small businesses are better able to comply with agency rules and to survive in a competitive marketplace.

"This in turn will mean that agencies specified in the bill will have to consider the adverse impacts to small business before promulgating regulations. I am encouraged by this move to help return common sense to the regulatory process affecting this very important sector of our economy."—Alaska Governor Frank Murkowski

Regulatory Flexibility Analysis

Sometimes, because of their size, the aggregate importance of small businesses in the economy is overlooked. Because of this, it is very easy to fail to notice the negative impact of regulatory activities on them. The intent of Advocacy's model legislation is to require regulatory agencies to consider small businesses when regulations are developed and particularly to consider whether there are alternative regulatory solutions that do not unduly burden small business but still accomplish the agency goal.

Tailoring regulatory proposals to the unique needs of small business saves small employers money that is better used to hire additional employees, provide health care, train existing staff, and upgrade their facilities and equipment. This can be accomplished without sacrificing health, safety, and welfare issues of major importance to state governments.

Judicial Review

The federal regulatory flexibility law had limited success in curbing excess regulatory burdens for 16 years until judicial review was enacted in 1996.

The effect of the 1996 law was to give the RFA some "teeth" and to focus the heightened attention of regulatory officials on small business issues. Approximately 4,000 regulations are finalized in any given year. Only 12 to 13 lawsuits that cite noncompliance with the RFA have been filed per year since federal judicial review was enacted in 1996. Allowing small businesses to challenge state agencies for failure to adequately consider their impact on small business during the regulatory process is critical, as it provides an incentive for agencies to conduct a thorough and well-reasoned economic and regulatory flexibility analysis.

"Adding judicial review is an important step forward for our state's small businesses. Now the law has some teeth, and that will help small business and state agencies work together to produce good regulations that get the job done without causing serious harm. It means a better business and job-creating climate for Missouri."—Scott George, President and CEO of Mid American Dental and Hearing Center, Mt. Vernon, MO

Periodic Review

Existing regulations may also unduly burden small businesses because the rule may no longer serve its purpose, may be duplicated by newer federal or state legislation, or may have been promulgated without consideration of the effects on small businesses. Also, given the length of time that may have passed since the rule was promulgated, technology, economic conditions, or other relevant factors may have significantly changed in the area affected by the rule. Therefore, it is critical that agencies review rules periodically to determine whether they should be continued without change, amended, or rescinded to minimize the economic impact of the rule on small businesses.

A clear example of how benefits can be derived from efforts to periodically review existing regulations comes from the Massachusetts Office of Consumer Affairs and Business Regulation (OCABR). OCABR has implemented a comprehensive 10-month review of every regulation promulgated by OCABR agencies to identify those that have become outdated or irrelevant. After publishing the proposed revisions, OCABR held a series of public hearings that gave affected small entities the opportunity to voice concerns about existing regulations and the proposed changes. OCABR was then able to refine the proposed changes based on this input.

The review is still in progress; however, approximately 50 pages of regulations have already been eliminated. Also as a result of this review process, the remaining rules are more precisely tailored, easier for regulated entities to understand, and less difficult for agency personnel to apply. OCABR also recognized that because the review process is now in place, future analyses should take considerably less time.

Exemptions

Even the strongest regulatory flexibility law has little value if most agencies and/or certain rules are exempt from it. Therefore, legislation should provide exemptions only to agencies or rules when it is absolutely necessary.

Fiscal Notes

During a time of tight state budgets, a common question is how much it will cost a state to implement regulatory flexibility for small businesses. The answer is that implementing a regulatory flexibility system can be accomplished at minimal to no additional cost to the state. In fact, the state saves money by getting input on costly or unnecessary regulation prior to implementation. Requiring small business analysis, input, and consideration of less burdensome alternatives ensures that state agencies make good final decisions. On the other hand, if regulations are poorly written and do not consider small businesses, they may need to be rewritten, which is more costly to state government than doing a thorough analysis the first time.

*Trained in FY 2003

Implementing regulatory flexibility for small businesses also does not require state agencies to incur excessive compliance costs for the preparation of the economic impact and regulatory flexibility analyses. Many states already conduct a general regulatory flexibility analysis. Segmenting out the impact on small business is a necessary additional step in the analysis. Moreover, rules that are finalized without adequate impact analysis run the risk of being more costly to both citizens and state agencies. And, it is not in the interest of state agencies to propose and finalize a rule that small businesses cannot comply with and causes widespread industry burdens resulting in layoffs and business closures.

Regulatory Flexibility Implementation

In states that have passed regulatory flexibility laws, the Office of Advocacy works with the small business community, state legislators, and state government agencies (usually the departmrnt of economic development) to assist with implementation and to ensure its effectiveness. Small business owners are the greatest resource that agencies can use to understand how regulations affect small businesses and what alternatives may be less burdensome.

"Our regulatory flexibility laws help to ensure a level playing field for South Carolina's small business."—Monty Felix, Alaglass Pools, Saint Matthews, SC, and chairman of the South Carolina Small Business Regulatory Review Committee

One of the most successful tools in communicating with small businesses and facilitating the implementation of regulatory flexibility legislation has been use of a free email regulatory alert system. A regulatory alert system allows interested parties to sign up and receive automatic regulatory alerts when agencies file a notice for a proposed rule that may affect their small business. Creating a user-friendly Internet-based tool allows small business owners, trade associations, chambers of commerce and/or other interested parties to stay on top of agency activities that may have an impact on small businesses. It also provides an avenue through which stakeholders can voice their concerns about the adverse impact of a proposed rule and suggest regulatory alternatives that are less burdensome.

Advocacy's state model legislation has been successful because policymakers across the country are realizing that regulatory flexibility is an economic development tool. More than 23.7 million small businesses in the United States create between 60 and 80 percent of the net new jobs in the U.S. economy. There is also no question that small businesses are the driving force of the economy in each state across the country.

"Giving small business owners a seat at the table when regulatory decisions are made allows for their voices to be heard and ensures that better decisions are made. This means more jobs and growth at the state and local levels."—Thomas M. Sullivan, Chief Counsel for Advocacy

Model Legislation

A BILL

To improve state rulemaking by creating procedures to analyze the availability of more flexible regulatory approaches for small businesses.

Findings

(1) A vibrant and growing small business sector is critical to creating jobs in a dynamic economy;

(2) Small businesses bear a disproportionate share of regulatory costs and burdens;

(3) Fundamental changes that are needed in the regulatory and enforcement culture of state agencies to make them more responsive to small business can be made without compromising the statutory missions of the agencies;

(4) When adopting regulations to protect the health, safety, and economic welfare of [State], state agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on small employers;

(5) Uniform regulatory and reporting requirements can impose unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses with limited resources;

(6) The failure to recognize differences in the scale and resources of regulated businesses can adversely affect competition in the marketplace, discourage innovation, and restrict improvements in productivity;

(7) Unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;

(8) The practice of treating all regulated businesses as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental, and economic welfare legislation;

(9) Alternative regulatory approaches which do not conflict with the stated objective of applicable statutes may be available to minimize the significant economic impact of rules on small businesses;

(10) The process by which state regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, to examine the impact of proposed and existing rules on such businesses, and to review the continued need for existing rules.

Section 1. Short Title

This act may be cited as the Regulatory Flexibility Act of [2006].

Section 2. Definitions

(a) As used in this section:

(1) "Agency" means each state board, commission, department, or officer authorized by law to make regulations or to determine contested cases;

(2) "Proposed regulation" means a proposal by an agency for a new regulation or for a change in, addition to, or repeal of an existing regulation;

(3) "Regulation" means each agency statement of general applicability, without regard to its designation, that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior regulation, but does not include (A) statements concerning only the internal management of any agency and not affecting private rights or procedures available to the public, (B) declaratory rulings, or (C) intra-agency or interagency memoranda;

(4) "Small business" means a business entity, including its affiliates, that (A) is independently owned and operated and (B) employs fewer than [five hundred] full-time employees or has gross annual sales of less than [six] million dollars.

Section 3. Economic Impact Statements

(a) Prior to the adoption of any proposed regulation that may have an adverse impact on small businesses, each agency shall prepare an economic impact statement that includes the following:

(1) An identification and estimate of the number of the small businesses subject to the proposed regulation;

(2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record;

(3) A statement of the probable effect on impacted small businesses;

(4) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Section 4. Regulatory Flexibility Analysis

(a) Prior to the adoption of any proposed regulation on and after [January 1, 2007], each agency shall prepare a regulatory flexibility analysis in which the agency shall, where consistent with health, safety, environmental, and economic welfare consider utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small businesses. The agency shall consider, without limitation, each of the following methods of reducing the impact of the proposed regulation on small businesses:

(1) The establishment of less stringent compliance or reporting requirements for small businesses;

(2) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(3) The consolidation or simplification of compliance or reporting requirements for small businesses;

(4) The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and

(5) The exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

(b) Prior to the adoption of any proposed regulation that may have an adverse impact on small businesses, each agency shall notify the [Department of Economic and Community Development or similar state department or council that exists to review regulations] of its intent to adopt the proposed regulation. The [Department of Economic and Community Development or similar state department or council that exists to review regulations] shall advise and assist agencies in complying with the provisions of this section.

Section 5. Judicial Review

(a) For any regulation subject to this section, a small business that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of this section.

(b) A small business may seek such review during the period beginning on the date of final agency action and ending one year later.

Section 6. Periodic Review of Rules

(a) Within four years of the enactment of this law, each agency shall review all agency rules existing at the time of enactment to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of those statutes, to minimize economic impact of the rules on small businesses in a manner consistent with the stated objective of applicable statutes. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, the agency shall publish a statement certifying that determination. The agency may extend the completion date by one year at a time for a total of not more than five years.

(b) Rules adopted after the enactment of this law should be reviewed every five years of the publication of such rules as the final rule to ensure that they minimize economic impact on small businesses in a manner consistent with the stated objectives of applicable statutes.

(c) In reviewing rules to minimize economic impact of the rule on small businesses, the agency shall consider the following factors:

(1) The continued need for the rule;

(2) The nature of complaints or comments received concerning the rule from the public;

(3) The complexity of the rule;

(4) The extent to which the rule overlaps, duplicates, or conflicts with other Federal, State, and local governmental rules; and

(5) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

[redacted]

From: MULVEY, MATTHIAS J [redacted]

Sent: Friday, May 22, 2015 6:54 AM
To: Brad MacDougall
Subject: FW: Senate Amendments - CO detectors

Brad:

It never stops!

We really need Governor Baker to step up to the plate and tell all agencies to stop the back door code process!

Matt Mulvey

From: Matt Mulvey [redacted]
Sent: Friday, May 22, 2015 5:31 AM
To: MULVEY, MATTHIAS [redacted]
Subject: Fwd: Senate Amendments - CO detectors

Sent from my Verizon Wireless 4G LTE DROID

-------- Original Message --------
Subject: Re: Senate Amendments - CO detectors
From: Richard P Crowley [redacted]
To: John Nunnari [redacted]
CC: [redacted]

Thank you John for sending that additional information and
Letting us know that those amendments tonight.

If anyone can get in touch with members of the conference committee, please have them note that Inserting this code like language through the budget could have the appearance of circumventing Executive Order 562 so it should be removed.

Executive Order 562 is supposed to stop regulation from being promulgated and the sentence John describes below is regulation.

If more Carbon Monoxide regulations are needed they should be added after due process through the building code not through the budget or the chapter 148 Section 26 laws.

Thank you,
Rich...

This message was sent from my amazing Mini I Pad

On May 21, 2015, at 2:03 PM, John Nunnari [redacted] wrote:

> Also meant to say, the following language was engrossed in the House budget (3401) and therefore will become part of conference committee deliberations.
> john
>
> **From HB 3401:**
> *"SECTION 42B. Section 26F1/2 of chapter 148 of the General Laws, is hereby amended by inserting at the end thereof, the following sentences:-*
>
> *For nonresidential buildings other than enclosed parking structures, and for nonresidential areas of a building that contains a mix of residential and nonresidential uses, carbon monoxide alarms shall be required only in areas or rooms containing a furnace, boiler, water heater, fireplace or any other apparatus, appliance or device that burns fossil fuel.*
>
> *SECTION 74C. Section 42B shall take effect on August 1, 2016."*
>
> ---
>
> **From:** John Nunnari
> **Sent:** Thursday, May 21, 2015 1:56 PM
> **To:** 'richardpcrowley'; [redacted] Brian Gale; [redacted]; Matt Mulvey; [redacted] 'Michael-from Expert Systems'
> **Subject:** RE: Senate Amendments - CO detectors
>
> Both amendments are dead.
> john
>
> ---
>
> **From:** richardpcrowley [redacted]
> **Sent:** Thursday, May 21, 2015 11:44 AM
> **To:** [redacted]; John Nunnari; [redacted] Brian Gale; [redacted] Matt Mulvey; [redacted] 'Michael-from Expert Systems'
> **Subject:** FW: Senate Amendments - CO detectors
>
> The Governor's Budget has two amendments that belong in the Regulatory arena, Not state law!
>
> *The Budget is being debated on Beacon hill this week. I believe the house has passed their version and the Senate is working on theirs. I believe the debate has not gotten to the 600 series so there is time but not much if you want to weigh in on the process.*
> *The Budget will still need to be reconciled between the two houses once the senate is through the amendments.*
>
> Please act now and please do not support these amendments to the Budget for the following reasons.

1. There is no correlation between these amendments and the Budget. These don't belong here.
2. These amendments are Regulatory and as such should be vetted through and managed by the Regulatory process.
3. The Regulatory system is set up so the public has greater access and input and professional experts on both sides can weigh in on the technical aspects and benefits to Public Safety. It's a flexible process so as times change the regulation can change as needed.
4. The Section 26 laws cannot be changed or revised except by special act by the State Legislature.
5. These amendments, if proven necessary, belong in the Building Code Chapter 143 not the 26 laws
6. Both amendments refer to Chapter 148 – Fire Prevention. These amendments are about the "Building and Structure" and as such belong in Chapter 143 the Building Code
7. A Regulatory hearing would show if there is a proven (not perceived) need and benefit to public safety
8. A proposer would need to show the facts surrounding these issues
9. Moving these amendments into the 26 laws will exacerbate an already fractured regulatory system, make a technical "regulation" into law, and this language would move these into the control of fire Services (Chapter 148) when they belong in the Building Code (Chapter 143).

Senate Bill #1322 which is in Committee right now is designed to bring regulations that were enacted into Law back into the regulatory process. The 26 Laws are an example of those kinds of Laws. Approving these amendments will only serve to exacerbate "law vs Regulatory System" confusion for the Regulated community.

Please do not support these amendments.

Please pass this around to anyone who you think may have a stake in this issue.
Rich...

From: John Nunnari [redacted]
Sent: Friday, May 15, 2015 9:34 AM
To: [redacted]
([redacted])
Subject: Senate Amendments - CO detectors

Just fyi....

Amendment #629

Carbon Monoxide Protection

Mr. Donnelly moved that the bill be amended by adding the following new section:-

"SECTION XX: Section 26F1/2 of chapter 148 of the General Laws, is hereby amended by inserting at the end thereof, the following sentences:-

For nonresidential buildings other than enclosed parking structures, and for nonresidential areas of a building that contains a mix of residential

and nonresidential uses, carbon monoxide alarms shall be required only in areas or rooms containing a furnace, boiler, water heater, fireplace or any other apparatus, appliance or device that burns fossil fuel."

Amendment #688

Carbon Monoxide Detectors in Schools

Mr. deMacedo moved that the bill be amended by inserting after section xxxx the following new section: "SECTION XXXX.

SECTION 1. Section 26F½ of said chapter 148 , as appearing in the 2012 Official Edition, is hereby amended by inserting after subsection (a) the following subsection:-

(a½) Each school building that provides public or private education for children in kindergarten through grade 12 that: (1) contains fossil-fuel burning equipment including, but not limited to, a furnace, boiler, water heater, fireplace or any other apparatus, appliance or device that burns fossil fuel; or (2) incorporates enclosed parking within its structure shall install carbon monoxide alarms under the regulations of the board of fire prevention.

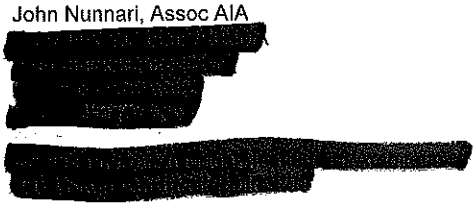
SECTION 2. Notwithstanding subsection (a½) of section 26F½ of chapter 148 of the General Laws, the board of fire prevention shall allow the temporary use of battery-operated carbon monoxide alarms.

SECTION 3. Section 2 is hereby repealed.

SECTION 4. Section 3 shall take effect on January 1, 2022.

SECTION 5. Unless otherwise provided, this act shall take effect on January 1, 2017.

John Nunnari, Assoc AIA



aimblog

Blueprint for the Next Century | A Plan for Economic Growth and Prosperity

Posted by John Regan on Nov 13, 2014 1:08:03 PM

(First of two parts. The Blueprint for the Next Century will be presented to Governor-Elect Charlie Baker tomorrow at the AIM Executive Forum.)

A visionary group of Massachusetts industrialists joined together in 1915 to promote economic growth, innovation and high-value jobs as a means of creating prosperity for the people of Massachusetts. They formed Associated Industries of Massachusetts (AIM) with the goal of working cooperatively with government and people with differing points of view to advance the common good.

Through 100 years of boom and recession, two world wars, a moon landing, the development of the Internet and the mapping of the human genome, AIM has participated in the public debate with the goal of making the "shining city on a hill" envisioned by Massachusetts' first governor an "economic city on a hill" for the rest of the world. AIM today represents more than 4,500 employers from every sector of the Massachusetts economy who together embody the learning, intelligence, ingenuity, work ethic and resilience that makes Massachusetts unique.

It is in that spirit that the employers of Associated Industries of Massachusetts celebrate a century of collective civic engagement by publishing the *Blueprint for the Next Century*, a plan for economic growth and prosperity for the next 100 years.

AIM's work on economic and business policy issues boils down to the nexus of a person, a job and an employer. The creation of a job and a person's ability to do it weaves together every important aspect of social and economic stability – the desire for a better life, the ability to support a family, the confidence to start a business, and the need to support efficient government management of services such as education, health care, and public safety.

Economic growth strengthens these bonds. The employer buys new equipment; workers use pay increases to send their children to college; and communities find ways to fix broken water mains. Economic downturns, conversely, strain the bonds between employer and community members who suddenly worry about layoffs, turmoil in the markets, the value of savings and municipal budget cutbacks.

AIM, like Massachusetts itself, remains forward looking. We embrace change and eagerly anticipate the challenges of the next century. Our *Blueprint for the Next Century* presents a positive agenda for meeting those challenges.

Tomorrow: The recommendations.

###

Where are the Workers for the New Economy?

Posted by Christopher Geehern on Nov 14, 2014 8:59:30 AM

(Second of two parts)

Eric Fogg, Bill Bither and Jacob Lauzier carry all the promise and challenge of the Massachusetts economy when they arrive for work each day in a nondescript office in the college town of Northampton.

The entrepreneurs are hard at work on a venture called MachineMetrics, a cloud software solution that improves the productivity of manufacturing facilities by collecting, analyzing and visualizing data from machines, parts and people. The two have already signed up high-profile regional manufacturers like Savage Arms in Westfield and Valley Steel Stamp in Greenfield as customers.

It's an almost mystical handshake from the future of the economy to the present, from one generation to another, acknowledging the seminal role that both must play to ensure prosperity for the people of Massachusetts in the next century.

"We need to persuade software entrepreneurs looking to create the next app or something in the software industry that there is a tremendous amount of opportunity in manufacturing. We need young entrepreneurs to connect with manufacturing companies and work on new ideas," said Fogg, who spent 16 years in precision machining and owned his own shop.

MachineMetrics is the kind of company that may ultimately determine the ability of Massachusetts to build upon an economy that in many ways remains a paradox—an international center of technology, innovation, medical research, financial services and higher learning near Greater Boston but a more traditional, amorphous economy outside of Route 128. Fogg, Bither and innovators like them hold the unique promise of joining the "eds and meds" economy of the 617 area code with existing industries struggling to create jobs for residents in the rest of the state.

It is a promise that will be played out against a vibrant and unforgiving global economy in which investment, resources, jobs, people and capital flow at blinding speed to the most competitive environments. States, regions and nations no longer have the luxury of taking their job bases for granted – failure to nurture the business climate not only impedes the growth of existing companies, but also leads to a silent and corrosive flow of job expansions to other locations that provide employers with the best opportunities for success.

The challenges that MachineMetrics faces are emblematic of those facing the commonwealth as a whole:

- Will the advanced manufacturing companies to which they want to sell their idea survive in the relentlessly high-cost, high-regulation environment of Massachusetts?
- Will machinemetrics find the skilled, educated and motivated people it needs to grow and to develop new iterations of the company's software?
- Will young companies located in western Massachusetts and other areas outside the Cambridge/Boston innovation beltway develop the critical mass needed to extend opportunity throughout the state?
- Will the machinemetrics platform make manufacturers so efficient that they will be able to increase business without creating new jobs?
- Will government regulators encourage the growth of companies like machinemetrics, or will they set up bureaucratic impediments like the ones that recently convinced a neighboring software company in Amherst to move to Texas?
- Will the government research money that built Massachusetts into a world class center of high education, medical science, biotechnology and defense technology continue to flow or slow to a trickle?

Massachusetts employers share a remarkable consensus about the answers to these fundamental questions. It is a consensus that forms the foundation of the *Blueprint for the Next Century*, a long-term plan for economic growth and prosperity in the commonwealth. Associated Industries of Massachusetts, the statewide employer association, is publishing the *Blueprint* on the occasion of its 100th anniversary in 2015.

The employers of the commonwealth respectfully propose the following initiatives to ensure the future of the Massachusetts economy:

1. Develop the best system in the world for educating and training workers with the skills needed to allow Massachusetts companies to succeed in a rapidly changing global economy.
2. Support business formation and expansion by creating a uniformly competitive economic structure across all industries, geographic regions and populations, rather than picking winners and losers.
3. Establish a world-class state regulatory system that ensures the health and welfare of society in a manner that meets the highest standards of efficiency, predictability, transparency and responsiveness.
4. Moderate the immense long-term burden that health care and energy costs place on business growth.

The *Blueprint for the Next Century* charts a course that will provide every citizen with the opportunity to build a life, prosper, support a family and share in the economic fortunes of Massachusetts. It is a call to action that embraces the dictum of Theodore Roosevelt, who said "We should not forget that it will be just as important to our descendants to be prosperous in their time as it is to us to be prosperous in our time."

aim ASSOCIATED INDUSTRIES OF MASSACHUSETTS 100 YRS

AIM stands for jobs, economic opportunity, fiscal predictability, business formation, innovation, education and a government that acknowledges that the private sector has the unique ability and responsibility to create the common wealth for the people of Massachusetts.

###

Blueprint for the Next Century | Work Force

Posted by Christopher Geehern on Nov 17, 2014 10:28:00 AM

(Editor's note - AIM last week released the Blueprint for the Next Century, a long-term plan for economic growth and prosperity in Massachusetts. The AIM blog will this week publish one summary each day of the four recommendations contained in the Blueprint. We invite your responses in the Comments section.)

Government and business must develop the best system in the world for educating and training workers with the skills needed to allow Massachusetts companies to succeed in a rapidly changing global economy.

Where We Stand

What if you created an economy and no one came? Massachusetts employers almost unanimously name the shortage of qualified workers as the central impediment to the future of the economy. The worker shortage crosses almost every industry, from manufacturers in the Pioneer Valley to software companies in Boston's Innovation District to research and engineering firms on the North Shore.

Where We Can Improve

1. Take advantage of the opportunity provided by the Work Force Innovation and Opportunity Act of 2014 to align the commonwealth's work-force training programs with the needs of employers and job seekers. The act requires Massachusetts to develop a four-year strategy – in the form of a single, unified strategic plan for core programs—for preparing an educated and skilled work force and meeting the hiring needs of employers. Massachusetts policymakers should rationalize the distribution and control of federal work-force training money to maximize results.

   Develop as part of the review a strategy to consolidate educational and work-force development systems that remain Balkanized in Massachusetts and widely inconsistent in terms of outcomes.

2. The governor should convene the Massachusetts High Demand Career Initiative, a broad consultation among business, education, government, labor and the general public to address the range of long-term issues embedded in the skilled-worker shortage. The initiative would send an unmistakable signal about the commonwealth's determination to be the global leader in work-force skills.

3. Employers, government and citizens must together elevate the role of vocational education and its potential to provide people the skills they need to realize their economic dreams.

   The commonwealth should work with private employers, led by AIM, to initiate a multi-year marketing and communications initiative to promote the value offered by vocational education and skills training. The initiative must address the ingrained cultural bias among parents and the general public that vocational education is for students who cannot succeed in college-preparatory high schools. The message should be that college is not the only pathway to success.

   Conduct a detailed inventory of the work-force needs and compensation opportunities in each region of the commonwealth; compare the findings to the programs offered at the state's 15 community colleges, 39 vocational high schools and traditional high schools that offer vocational programs.

   Develop a strategy to ensure consistent excellence among vocational schools. Some of these schools are among the best in the country, but municipal officials say others are dumping grounds for school systems seeking to boost the MCAS scores of their traditional high schools.

   Distribute educational aid in a manner than eliminates the waiting lists that exist at half of the commonwealth's vocational high schools.

   Encourage acceptance of the Manufacturing Assistance Center Workforce Innovation Collaborative curriculum by vocational schools and community colleges around the state.

   Encourage more industry-driven, demand-based training partnerships in developing fields, such as the aviation technology programs currently being developed on Cape Cod and in the City of Westfield.

   Allow vocational schools to work with community colleges to grant associates degrees.

4. In skill areas not currently served by vocational education, employers, government and educators should create a system in which public schools provide students with strong, fundamental math, science and communication skills while businesses develop programs

to teach specific job skills.

Evaluate high schools based not only on the number of graduating students who attend college, but on the number who graduate and obtain gainful employment.

Establish a statewide recognition program to honor schools with the best record of graduating skilled workers.

Replicate the example of Tech Foundry in Springfield, which provides information technology training to students in Springfield after school, on week-ends and during school vacations. Students work with business mentors to determine the IT skills that employers need and then earn skill badges and later intern with employers. The initiative is funded by foundations and the private sector.

Replicate the similarly successful model of organizations such as Girls Who Code, which work to inspire, educate and equip girls in a manner that will create gender parity in the computing field.

Implement the recommendations of the Massachusetts Computer Action Network to integrate curriculum in the public schools that will prepare students for careers in computer science and other technical fields.

5. Expand performance-based funding for Massachusetts community college and public four-year institutions.

   Support the recent recommendations of the Massachusetts Higher Education Commission establishing five-year performance benchmarks on work-force development and civic learning for the entire system.

6. Global companies with a significant presence in Massachusetts should establish partnerships that harness the intellectual capital of the region's colleges and universities. State government should consider modest financial incentives to encourage such partnerships.

   One such model is the new joint research facility established by Raytheon Company with the University of Massachusetts in Lowell. The project is focused on the advancement of innovative technologies in a collaborative, state-of-the-art institute. Raytheon is committing between $3 million and $5 million over the next 10 years.

   The State of New York provides financial incentives to companies that establish or training partnerships with public or private colleges and universities. Such incentives are notable in that they are not geared to one-time efforts to attract a single employer, but

rather to sustained efforts that build a cooperative infrastructure between employers and higher education.

6. Employers must establish a consistent level of engagement with educational institutions and training providers to ensure a pool of skilled potential employees.

   More employers must create internship programs and Massachusetts must encourage such programs. The companies that are most successful in attracting talent are almost always those that have invested in creating on-the-job educational opportunities for students in the workplace.

   Replicate partnerships such as the manufacturing skills training program developed in Springfield by Springfield Technical Community College, Holyoke Community College and the University of Massachusetts with private support from companies such as Smith & Wesson, MassMutual and Suffolk Construction.

   Employers in the information technology field must engage with public and private four-year colleges to ensure that these institutions are teaching up-to-date skills. Many employers complain that while community colleges turn out graduates with appropriate skills, a significant number of graduates of four-year colleges come to the workplace with outdated skills.

7. Massachusetts should conduct a comprehensive best-practices audit to determine the best approaches to work-force training being used on in other states and countries. South Carolina, for example, has developed a successful manufacturing apprenticeship program in which promising young people are paid both for working and for their classroom studies. The program is based on those prevalent in Germany and is being driven by German companies such as BMW, which operate plants in South Carolina.

8. Emphasize the role that returning veterans can play in filling needs for employees. Hiding in plain sight here in Massachusetts and throughout the country are millions of men and women who have technical skills forged in an arena where split-second decisions mean the difference between life and death. Post 9-11 era military veterans represent a massive untapped source of talented people who already know the value of showing up for work on time, teamwork and accomplishing a mission.

   Encourage employer support for hiring programs such as New England Tech Vets (www.newenglandtechvets.org) or Helmets to Hardhats (www.helmetstohardhats.org), a union initiative to connect veterans with building and construction careers.

"My job is to prepare students for jobs that have not yet been created using technology that has not yet been invented."
School Principal

###

Blueprint for the Next Century | A Uniformly Strong Business Climate

Posted by Christopher Geehern on Nov 18, 2014 7:17:46 AM

(Editor's note - AIM last week released the Blueprint for the Next Century, a long-term plan for economic growth and prosperity in Massachusetts. The AIM blog will this week publish one summary each day of the four recommendations contained in the Blueprint. We invite your responses in the Comments section.)

Create a competitive economic structure across all industries, geographic regions and populations rather than picking winners and losers.

Where We Stand

Effective governments build business climates that encourage employers in all industries to invest, expand and create economic opportunity. These governments resist the temptation to spend public resources on the high-profile industry of the moment and instead ensure that long-term business costs, regulation, education, training and responsiveness help everyone—from the multinational high-tech company to the small entrepreneur.

A stable and predictable business climate is particularly important to capital-intensive sectors of the economy like manufacturing. No sector creates more economic value than manufacturing in Massachusetts. Manufacturing productivity surged 8.7 percent from 2007-2011, far faster than the overall growth rate of 1.7 percent. Each Massachusetts manufacturing worker adds an average of $178,625 to gross state product versus $114,568 for all private-sectors workers.

Manufacturing remains a key area of interest for Associated Industries of Massachusetts, which has represented the interests of such companies since 1915.

Where We Can Improve

Business Climate

1. Structure economic development incentives around the business requirements of employers rather than the preconceived notions of which geographic regions would benefit most from job growth. Incentives to locate in Gateway Cities are important, but

no more important than the needs of companies that might grow in Massachusetts, but are unable to locate near older industrial cities.
2. Extend economic development incentives to companies in all industries, in all regions, rather than limiting benefits to biotechnology, clean technology or other selected sectors.
3. Use economic development to encourage projects that benefit the highest number and variety of wage earners.
4. Build flexibility into economic development incentives so the commonwealth will have the opportunity to respond to new challenges as they arise.
5. Let business needs drive the process.

Manufacturing

1. Massachusetts must solve the long-term electricity cost crisis that threatens the survival of manufacturing in the commonwealth. (Health Care and Energy Section)
2. Employers, government and citizens must together elevate the role of vocational education and its potential to provide people the skills they need to realize their economic objectives. (Work Force Section)
3. We should replicate partnerships such as the $9.7 million Berkshire Innovation Center in Pittsfield. A membership cooperative led by companies such as Crane & Company and General Dynamics, the 20,000-square-foot center will include tools for precision analysis and microscopy, rapid 3D prototype printing and other operations crucial to expanding productivity for smaller companies.
4. The Massachusetts Advanced Manufacturing Collaborative should work to re-establish the once close connection between the innovation sectors of the economy and the commonwealth's base of advanced manufacturers. Medical researchers, clean-tech entrepreneurs, nanotechnology developers and others need access to the unparalleled engineering and manufacturing expertise of Bay State companies to make their ideas tangible. Allow innovation to drive downstream benefits in other sectors of the economy.
5. Organize a "Trade Mission to Massachusetts" that would expose innovators from Greater Boston to potential partners and manufacturers in other parts of the commonwealth. It's a way to encourage an exchange of ideas and the formation of long-term connections.
6. Government and the private sector must help Massachusetts manufacturing companies expand markets overseas, especially as U.S. government spending on defense and health care declines.
7. Ramp up the frequency and variety of trade missions. These missions make practical connections for employers and raise the visibility of exporting as a key issue.
8. Support appropriate free trade agreements between the United States and important trading partners (T-TIP between the US and the European Union; and the Trans-Pacific Partnership), as well as initiatives such as trade promotion authority, re-authorization of the Export-Import Bank and immigration reform.
9. Improve the current structure for encouraging foreign direct investment in Massachusetts.

10. Establish an online portal to facilitate connections between Massachusetts companies and collaborators, partners and investors overseas.

Business Formation

Business formation and entrepreneurship represent the source of regeneration for an economy. It is particularly important in Massachusetts, which ranks among the highest in the U.S. for patent creation and venture capital investment.

1. Government should remove impediments to the e-service economy (Uber etc.) by changing the independent contractor law.
2. Support Best Return on America's Investment Now, or BRAIN Act, which would create a visa for foreigners who receive an advanced degree in science, technology, engineering and math.
3. Exempt businesses earning less than $500,000 from the corporate income tax.
4. Reduce fees for starting and maintaining a business (LLCs have $500 initial filing fee and $500 annual filing fee; reduce to $125).
5. Encourage the development of the Maker Economy and creative production facilities such as Industry City in Brooklyn. The maker movement is the umbrella term for independent inventors, designers and tinkerers who combine crafts, manufacturing, open-source learning and personal technology like 3-D printers. The creations, born in cluttered local workshops and bedroom offices, are meant to appeal to consumers looking for locally-sourced, high-quality products instead of generic, mass-produced, made-in-China merchandise.

###

Blueprint for the Next Century | Regulation

Posted by Christopher Geehern on Nov 19, 2014 9:16:00 AM

(Editor's note - AIM last week released the Blueprint for the Next Century, a long-term plan for economic growth and prosperity in Massachusetts. The AIM blog will this week publish one summary each day of the four recommendations contained in the Blueprint. We invite your responses in the Comments section.)

Establish a world-class state regulatory system that ensures the health and welfare of society in a manner that meets the highest standards for efficiency, predictability, transparency and responsiveness.

Where We Stand

Massachusetts employers acknowledge the need for effective and well-managed regulation that ensures the health and welfare of society without weakening the financial underpinnings of the job market. But the employer community believes that Massachusetts regulations and the regulators who enforce them often stray from the primary objective of protecting society and into a mindset of "punishing" businesses.

Where We Can Improve

1. The governor should appoint an independent ombudsperson to review comments, suggestions and complaints from employers about ineffective state regulations and/or the manner in which those regulations are enforced. The ombudsperson would have the authority to determine which regulations and/or enforcement issues represent real impediments to growth and recommend changes to the Legislature or the executive branch.

   Associated Industries of Massachusetts, as the statewide business association, will establish a phone/internet hotline, or perhaps a mobile app, through which employers might report regulations they believe are not efficiently achieving their objectives. AIM would pass these communications to the ombudsperson.

2. Encourage regulators and employers to adopt "smart partnerships" to ensure that government-business interactions solve problems instead of propping up bureaucracies.

   State Senator Daniel Wolf from the Cape and Islands, founder of Cape Air in Hyannis, recalls an example of creative problem solving that took place many years before he entered public service. The Federal Aviation Administration required (and requires) Cape Air to scrupulously wash all aircraft. The airline did so, but then faced fines from the Massachusetts Department of Environmental Protection because there was some runoff into drains on the airport tarmac. After good-faith negotiations, the DEP and Cape Air reached an agreement: Cape Air paid for a state-of-the-art clean wash bay for Barnstable Municipal Airport, and DEP significantly reduced the fine. This was a win for the company and a win for the citizens of the commonwealth. And, it represents a great example of a "smarter partnership."

   The governor should engage willing employers who are global leaders in productivity and process improvement to streamline the operation of state government agencies. General Electric, an AIM member, provided just such a service for the New York State Highway Department at the request of Governor Andrew Cuomo. GE Capital used its expertise in lean process to help the Highway Department reduce the processing time for curb-cut requests from 70 days to three days.

Empower front-line regulators with the authority to approve creative solutions such as the one developed with Cape Air.

3. Initiate a comprehensive review to identify regulations that are outdated, redundant, ineffective, inefficient or unnecessary.

4. Eliminate current state regulations that exceed federal standards.

5. Adopt an immediate moratorium on any state law or regulation that exceeds or duplicates a federal law or regulation.

6. Enact broad regulatory reform at the Massachusetts Department of Revenue:

   Ensure that taxpayer returns remain confidentially held by the DOR.

   Ban DOR from lobbying the Legislature and other elected officials.

   Reform the DOR's audit practices to ensure timely resolution of disputes and increase the use the mediation.

   Reform the Appellate Tax Board to ensure fair, equitable and timely resolution of tax disputes.

   Eliminate the practice and use of contingent auditors.

   Improve the DOR's electronic filing system, which is one of the most challenging and complicated in the country.

7. The state should work with cities and towns to establish a set of efficiency and fairness standards for local issues such as inspections, fees and permitting.

   Associated Industries of Massachusetts, perhaps in conjunction with the Massachusetts Municipal Association, will develop an annual rating of the business climate in cities and towns and recognize the top 10 municipalities for business.

   The commonwealth and its municipalities should move toward regionalization of functions such as inspections and permitting to improve efficiency.

###

Blueprint for the Next Century | Energy, Health

Posted by Christopher Geehern on Nov 20, 2014 8:39:01 AM

(Editor's note - AIM last week released the Blueprint for the Next Century, a long-term plan for economic growth and prosperity in Massachusetts. The AIM blog will this week publish one summary each day of the four recommendations contained in the Blueprint. We invite your responses in the Comments section.)

Moderate the substantial burden that health care and energy place on business growth.

Where We Stand | Health Insurance

Massachusetts has enjoyed unique success extending health insurance coverage since the passage of health care reform in 2006 - an impressive 97 percent of residents now have health insurance, by far the largest percentage of any state. But that success is threatened by relentless acceleration of health care costs and the resulting run-up in the cost to employers of providing health insurance to workers.

Where We Can Improve

1. Establish a more aggressive benchmark for medical spending under the 2012 Massachusetts health-cost control law. The law currently benchmarks increases in health care spending to the growth rate of the overall economy. We can do better.

2. Keep the small-group market size the way it is. The small-group market will expand in 2016 under Federal Health Care Reform from companies with 1-50 employees to companies with 1-100 employees. Forcing employers into the small group market will cause rate increases of at least 10 percent for the 51-100 companies.

3. Maintain the current definition of a full-time employee. The Massachusetts definition was 35 hours per week, while federal reform requires coverage for employees working 30 or more hours per week. Employers will respond by reducing the number of hours employees can work. We have already heard from employers who are being forced to do this because of the significant and unaffordable increases in their health insurance costs.

4. Repeal the Medical Device Tax under federal health reform. The 2.3 percent excise tax on the sale of medical services is damaging to a key sector of the Massachusetts economy, costing the commonwealth's largest medical device companies more than $400 million this year alone.

5. Continue efforts to make cost and quality information about health care procedures and services available to consumers before treatment. Refine and improve the information and encourage consumers to use it to make informed decisions about their health care. It's a process that will persuade higher cost providers to lower prices.

Where We Stand | Energy

Average electric rates in Massachusetts are the third highest in the nation for industrial ratepayers at 12.63 cents per kilowatt hour, according to the United States Department of Energy's Energy Information Administration. Electricity costs have reached crisis stage as a persistent shortage of natural gas for generating plants is driving power prices to record levels for the winter of 2014-2015.

Where We Can Improve

1. Support the development of pipelines to transport natural gas into the commonwealth and the development of infrastructure to permit the purchase of hydroelectric power from Canada.

2. Environmentalists have been fighting against more natural gas coming into the state for years, which partly explains why pipeline capacity hasn't expanded. They also say consumers can conserve a lot more energy, but Massachusetts is already at the forefront on energy efficiency efforts. The state was just ranked first in the nation for energy efficiency for the fourth year in a row by the American Council for an Energy Efficient Economy.

3. Reorganize the Massachusetts Department of Public utilities to the structure that was in place before 2007.

   Remove DPU from under Executive Office of Energy and Environmental Affairs, where it has become a political agency, and restore its status as an independent agency under the Executive Office of Housing and Economic Development.

   Increase the number of DPU commissioners from three to five, one of whom must be experienced in commercial and industrial ratepayer issues and one of whom must be experienced in residential ratepayer issues.
4. Cap all "green programs" or require analysis of such programs that takes into account cost to the ratepayer, not just benefit to the "green" industry.

   Make sure that any "green" programs are competitively bid and cover the lowest-cost requirements first. These bids should be technology neutral with no specific carve-outs for "favored" technology.

   Reduce/eliminate cross subsidization of "green" programs by eliminating net metering and other programs.

5. Disallow utilities from adding "green" programs to distribution costs, a practice that results in customers paying twice for programs.

6. Change energy efficiency programs to align changing models with new paradigm.

   Allow municipal electric light companies access to Regional Greenhouse Gas Initiative funds to institute energy-efficiency programs.

   Allow companies to keep a larger share of their energy efficiency money, provided they use it for energy efficiency purposes.

END

[redacted]

From: noreply=hubspot.com@emailer.hubspot.com on behalf of noreply@hubspot.com
Sent: Thursday, April 02, 2015 7:34 AM
To: Brad MacDougall
Subject: Response to: Regulation (www.aimnet.org)

[redacted]

Contact reconversion on form:

Regulation

On landing page:

Regulatory Issue

First Name:

Daniel

Last Name:

Gilbreath

Company Name:

[redacted]

Job Title:

[redacted]

Phone Number:

[redacted]

Email:

[redacted]

What's your regulatory issue?:

520 CMR 6.00 Hoisting Machinery has unreasonable requirements for non-construction businesses. Particularly, those that have minimal exposure to the general public since this regulation is promulgated by the Dept. of Public Safety.

Contact:

Daniel Gilbreath

View contact in HubSpot

View contact in Salesforce

[redacted]

From: noreply=hubspot.com@emailer.hubspot.com on behalf of noreply@hubspot.com
Sent: Monday, April 06, 2015 8:45 AM
To: Brad MacDougall
Subject: Response to: Regulation (www.aimnet.org)

New submission on form:

Regulation

On landing page:

Regulatory Issue

First Name:

Jim

Last Name:

Flanagan

Company Name:

[redacted]

Job Title:

[redacted]

Phone Number:

[redacted]

Email:

[redacted]

What's your regulatory issue?:

Why do we have to file 1. a 355Q and 2. a certification of business and 3. an annual report EVERY YEAR? Three filings annually with much redundant information that could be collected when we have to... yes, ANOTHER filing, file our taxes. This is insane. It is an burden on small businesses and wasteful use of the commonwealth's resources.

Contact:

Jim Flanagan

View contact in HubSpot

View contact in Salesforce

[redacted]

From: noreply=hubspot.com@emailer.hubspot.com on behalf of noreply@hubspot.com
Sent: Tuesday, March 31, 2015 2:49 PM
To: Brad MacDougall
Subject: Response to: Regulation (www.aimnet.org)

New submission on form:

Regulation

On landing page:

Regulatory Issue

First Name:

Peter

Last Name:

Vickery

Company Name:

[redacted]

Job Title:

[redacted]

Phone Number:

[redacted]

Email:

[redacted]

What's your regulatory issue?:

I recommend revising 804 CMR 1.00, so that the Massachusetts Commission Against Discrimination (MCAD) would have to hold a prompt hearing on a respondent's motion to dismiss and suspend any and all investigative activities until the Commission has decided the motion.

Contact:

Peter Vickery

View contact in HubSpot

View contact in Salesforce

[redacted]

From: noreply=hubspot.com@emailer.hubspot.com on behalf of noreply@hubspot.com
Sent: Tuesday, March 31, 2015 3:15 PM
To: Brad MacDougall
Subject: Response to: Regulation (www.aimnet.org)

Contact reconversion on form:

Regulation

On landing page:

Regulatory Issue

First Name:

Kate

Last Name:

Putnam

Company Name:

[redacted]

Job Title:

[redacted]

Phone Number:

[redacted]

Email:

[redacted]

What's your regulatory issue?:

The ASAB is a rat's nest of embodied self-interest on the board. They are impeding the redevelopment of most of the Gateway cities with their rulings on building renovations and the threat of their rulings. Get impartial people onto the board.

Contact:

Kate Putnam

View contact in HubSpot

View contact in Salesforce

[redacted]

From: noreply=hubspot.com@emailer.hubspot.com on behalf of noreply@hubspot.com
Sent: Tuesday, March 31, 2015 4:24 PM
To: Brad MacDougall
Subject: Response to: Regulation (www.aimnet.org)

Contact reconversion on form:

Regulation

On landing page:

Regulatory Issue

First Name:

Katherine

Last Name:

Fairbanks

Company Name:

[redacted]

Job Title:

[redacted]

Phone Number:

[redacted]

Email:

[redacted]

What's your regulatory issue?:

In the 1930s laws requiring "permitting to haul offal" were put in place. As the waste removal industry bec waste. However, there is no consistency and the permitting fees are prohibitive to small business growth. C $100-$150 per truck to $500 per company. These permits are required to provide weekly residential pick u However, I have been informed that communities in the north shore require $25 permits. There is no consis revenues.

Contact:

Katherine Fairbanks

Found site via:

http://www.google.com/url?sa=t&rct=j&q=associated%20industries%20of%20massachusetts&source=wel nfU9uhDc6vyASCyYGgAw&usg=AFQjCNEE44XuZzowOHG5VUkBERsQn711MA&sig2=sbVuY45TPf0

View contact in HubSpot

View contact in Salesforce