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Taking Action to Grow New Jersey's Economy and Create Jobs

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Red Tape Review Group Delivers Tangible, Realistic Recommendations

Taking Immediate Action to Grow New Jersey's Economy and Create Jobs

New Jersey's reputation as a state that repels business growth and job creation has been aggravated by a business climate that has consistently ranked last in the nation, an environment ranked 42nd in terms of economic "competitiveness," and a public policy climate ranked 50th for small business and entrepreneurship.

A common source of frustration expressed by employers who seek to bring jobs and economic growth to New Jersey, or maintain or expand business already located in this state is the extensive web of administrative rules and regulations. When compared with other states, New Jersey's regulatory systems are often regarded as being unpredictable, overly-complicated and often contradictory.

The first step to making New Jersey a Home for Growth is tackling the arduous and counterproductive regulatory system. It is critical these goals be accomplished while keeping in place public health, environment and safety standards. However, administrative rules need to be consistent, understandable and decisions timely.

Red Tape Review Group Delivers Tangible and Realistic Recommendations

On his first day in office, Governor Christie executed a 90 day freeze on 128 proposed regulations in Executive Order No. 1. The Red Tape Review Group was initially tasked with reviewing pending and proposed rules and regulations, as well as all operative Executive Orders from previous administrations, in order to assess their effects on New Jersey's economy and to determine whether their burdens on business and workers outweigh their intended benefit.

During this time, the Red Tape Review Group conducted a transparent and bi-partisan process in order to provide tangible and realistic recommendations that will lead to economic growth and job creation. The Group has recommended the withdrawal or modification of 16 of the 128 rules (12.5%) that were frozen. If 12.5% of the remaining 26,000 pages of rules were to be withdrawn or modified, continuing the Red Tape Review process could result in the elimination of over 3,000 pages of rules. This is the equivalent of approximately 111 chapters of the Administrative Code.

Using the set of "Common Sense Principles", the departments of Banking and Insurance, Education, Environmental Protection, Labor and Workforce Development and Law and Public Safety withdrew a number of proposals for further evaluation and review. Rules and regulations that have been withdrawn include:

- **Ophthalmic Dispensers and Ophthalmic Technicians Board - Registration for Contract Lens Sellers.** The rule requiring out-of-state sellers of replacement contact lenses to register with the Board before selling them in New Jersey. This rule overlaps with federal standards.
- **Sale of Tires.** This was a pre-proposal to elicit input on possible regulations for consumer notification as to the age of tires.
- **Nonrenewal and Cancellation of Private Passenger Auto Insurance.** This proposal revises the nonrenewal process for automobile insurers in light of the phase out of "all-comers" on January 1, 2009. This rule will be re-proposed with substantial revisions.
- **Codifying the Process to Review Substantial Reliance Claims.** DEP recommends letting this rule which deals with the Freshwater Wetlands expire because the issue of substantial reliance will be address in the Department's broader review of rules for waivers of strict compliance.

While the first 90 days required agencies and departments to review proposed rules and regulations, Executive Order No. 2 also called for the review of existing regulations for compliance with the common sense principles and were given 180 days to complete the task. That important work is ongoing.

Long-Term Legislative, Regulatory and Policy Recommendations

The Red Tape Review Grew also provided long-term legislative, regulatory and policy recommendations to ensure New Jersey government continues to streamline and more effectively coordinate services that impact economic growth and job creation.

Improving and Expediting the Rulemaking Process. The Red Tape Review Group recommends more extensive reform, and provides immediate steps to reform the "Administrative Procedure Act."

- **State Agencies Should be Permitted to Adopt Changes to Proposed Administrative Rules Based on Public Comment.** The testimony received by the Red Tape Review Group made clear that it is overly difficult for a

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State agency to alter a rule proposal based upon reasonable and justifiable public comment. The "Administrative Procedure Act" should be revised to permit State agencies to adopt substantive changes to proposed rules based on public comment without needing to undergo the entire rule-making process anew, provided that an additional public comment period is provided prior to the altered rule taking effect.

- **Reform the System of Administrative Adjudications.** The Red Tape Review Group heard testimony that the current process was undermining the initial intent of the Office of Administrative Law to bring impartiality, objectivity and a heightened fairness to agency determinations. While further investigation needs to take place, some immediate steps can be taken:
 - **Oral Initial Decision.** The Administrative Law Judges should be authorized to issue their initial opinion orally, unless the agency requests a written opinion. This will streamline the administrative adjudication process.
 - **Checklist Decisions.** Administrative Law Judges should be authorized to issue their initiation opinion in a checklist format where appropriate. This is intended to streamline the administrative adjudication process in appropriate cases by allowing opinions to be issued faster.
 - **Authorize Agencies to Delegate Final Authority.** Government agencies should have the ability to delegate the agency's authority to issue a final determination to the Administrative Law Judge, as the agency believes appropriate. State agencies should be authorized to delegate all or some of the agency's final decision-making authority on administrative adjudications to the individual Administrative Law Judges.
- **New Rule Proposals Should be Subject to a Three-Year Sunset Provision.** The Red Tape Review Group recommends revising the Byrne Executive Order No. 6, which dictated that all agency rules must expire or "sunset" within five years unless readopted under the rule-making procedure. The Group recommends a shortened expiration time-frame of three years for new rules. This will afford agencies an opportunity to substantively reexamine new rules after a short time period of implementation in order to revise the rules to address any practical difficulties. The Group also recommends the creation of a "decision matrix" to help ensure that implementation and review has consistency, and conforms with the common sense principles for rulemaking.

Giving Entities the Ability to Combat Unfunded Mandates . The Red Tape Review Group recommends providing new and expanded powers to help combat unfunded mandates.

- Council of Local Mandates enabling statute should be expanded to give organizations other than local governments and boards of education standing to bring complaints before the Council.
- The Legislature should give consideration to a proposed constitutional amendment to authorize the Council on Local Mandates to proactively seek out unfunded mandates for elimination.
- The Red Tape Review Group recommends a full review of all statutory and regulatory mandates and suggests enlisting the cooperation of the State's law schools to assist in a review of unfunded mandates.

Following "Common Sense Principles." State agencies should adopt the "Common Sense Principles" for rulemaking.

Creating a Consistent and Timely Review of Regulation and Rule Effectiveness . Establish a Red Tape Review Group to succeed the 90-day Red Tape Review Group.

- **Allow for Continual Public Comment.** The sheer numbers and volume of submissions presents to the 90-Day Group constitutes a strong argument in favor of the establishment of a body which people can appear before to bring complaints about, or suggestions to improve, the regulatory process.
- **Long-Term Approach to Reform.** A long-term approach to regulatory reform is keeping in step with the efforts of other states around the country and would also ensure that State agencies complete their review of existing rules and regulation. Additionally, this would ensure that administrative rules and regulations are not unnecessarily impeding economic growth and job creation.

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Press Contact:
Michael Drewniak
609-777-2600



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Office of the Governor
PO Box 001
Trenton, NJ 08625
609-292-6000