



PA House of Representatives
Republican Policy Committee

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Rep. Joshua D. Kail
Chairman

PA House Republican Policy Committee Hearing
“Obstacles to Opportunity: PA’s Permitting Process”

March 22, 2023, at 10 a.m.

Room 205, Ryan Office Building
Harrisburg, PA

10:00 a.m.	Welcome and Pledge of Allegiance
10:10 a.m.	Michael Ford <i>Secretary-Treasurer, Pennsylvania State Building and Construction Trades Council</i>
10:20 a.m.	Kevin Sunday <i>Director of Government Affairs, Pennsylvania Chamber of Business and Industry</i>
10:30 a.m.	David Taylor <i>President & CEO, Pennsylvania Manufacturers’ Association</i>
10:40 a.m.	Questions for Testifiers
11:15 a.m.	Closing Comments and Conclusion



Testifier Biographies

PA House of Representatives Policy Committee Hearing *"Obstacles to Opportunity: PA's Permitting Process"*

Michael Ford

Secretary-Treasurer, Pennsylvania State Building and Construction Trades Council

A member of Sheet Metal Workers Local 19, Michael Ford currently serves as the Secretary-Treasurer for the Pennsylvania State Building and Construction Trades Council.

Kevin Sunday

Director of Government Affairs, Pennsylvania Chamber of Business and Industry

As a member of the government affairs team for the largest broad-based business advocacy association in the state of Pennsylvania, Kevin manages energy and environmental legislative and regulatory issues, including matters relating to air, waste, water, land use, natural resources, power generation, transportation and transmission. He has helped secure passage of recent key environmental legislation at the state level and helped shape the development and implementation of various energy and environmental regulations.



In addition, Kevin has testified on these issues before Congress, the Pennsylvania legislature, EPA and FERC and regularly provides the Chamber's perspective on such matters to leading regional print and broadcast media outlets. Kevin regularly files comments and testimony on behalf of the Chamber on key regulatory and legislative matters to various state and federal agencies, working in concert with the various members of the Chamber to develop consensus positions on such matters.

Prior to joining the Chamber, Kevin led media relations and communications for the Pennsylvania Department of Environmental Protection and held a senior role with a communications firm.

Kevin serves on the board of directors for the American Red Cross Central Pennsylvania Region and is a magna cum laude graduate of Towson University.

He lives in Mechanicsburg with his wife, Heather, and their two sons, Isaac and Owen.



David N. Taylor
President & CEO, Pennsylvania Manufacturers'
Association

David N. Taylor is President & CEO of the Pennsylvania Manufacturers' Association, the statewide trade organization representing the manufacturing sector in Pennsylvania's public policy process. Now in his 26th year with PMA, Taylor is the association's chief spokesman at the state Capitol in Harrisburg and in the media. He is editor of the PMA Bulletin and host of the statewide television program "PMA Perspective" on the Pennsylvania Cable Network.

A frequently sought guest and commentator, David is also the host of "Capitol Watch", a twice-monthly news and commentary program on "Lincoln Radio Journal", which is heard on more than 90 radio stations across Pennsylvania.

David is chairman of the Pennsylvania Leadership Council and a member of the American Enterprise Institute's Leadership Network. He serves on the boards of directors of the Pennsylvania Manufacturers' Association, the Pennsylvania Steel Alliance, the Foundation for Free Enterprise Education, the Business-Industry Political Action Committee (BIPAC), and the Lincoln Institute for Public Opinion Research. He is the immediate past chairman of the Pennsylvania Coalition for Civil Justice Reform and has completed his term on the executive committee of the Conference of State Manufacturing Associations (COSMA).

David was a member of Governor Tom Corbett's Manufacturing Advisory Council. He is school board president of Reach Cyber Charter School, an online public school providing a broad range of science, technology, engineering, and math (STEM) enrichment for students.

Prior to joining PMA, David worked in the United States Senate and the Senate of Pennsylvania. A native of Huntingdon PA, David is a graduate of Dickinson College, where he majored in History and Dramatic Arts. He is an Elder of the Huntingdon Presbyterian Church and member of Central Pennsylvania MENSA.

He lives near Hershey PA with his wife Erica and their daughter Meredith.





Testimony

Submitted on behalf of the
Pennsylvania Chamber of Business and Industry

Obstacles to Opportunity: PA's Permitting Process

Before the:
Pennsylvania House Republican Policy Committee

Presented by:
Kevin Sunday
Director, Government Affairs

Harrisburg, PA
March 22, 2023

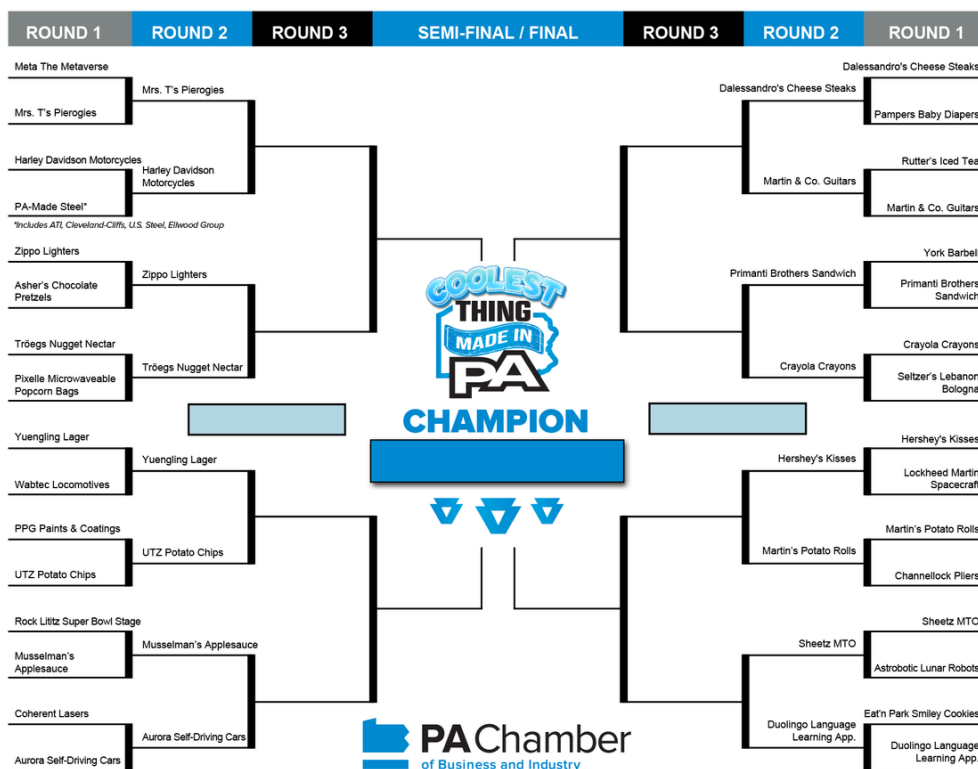
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Good morning Chairman Kail and honorable members of the House Republican Policy Committee.

Thank you for the opportunity to join you today. My name is Kevin Sunday, director of government affairs for the Pennsylvania Chamber of Business and Industry, the largest, broad-based business advocacy organization in the Commonwealth. Our nearly 10,000 members are of all sizes and of all commercial and industrial sectors.

It is an honor to appear before you this morning to discuss our state's competitiveness and the challenges and opportunities before us with respect to improving permitting new and expanded projects. These reforms are critical to a public policy framework that will lead to greater opportunity for our residents and future generations.

We at the Chamber are incredibly proud of our state's contributions and leadership when it comes to agriculture, manufacturing, energy, life sciences, innovation and technology. Most recently, we are proud to have launched a "Coolest Thing Made in PA" bracket contest¹, which is drawing tens of thousands of voters online and statewide media coverage, and is a great spotlight for what we produce in Pennsylvania – from Rock Lititz' Super Bowl Stage to the Astrobotics' lunar lander, the Sheetz MTO to Mrs. T's Pierogies. It's quite clear from the overwhelming response to this initiative – through regular and social media channels - that Pennsylvanians are proud of what we make.



¹ 2023 Coolest Things Made in PA Tournament. https://www.pachamber.org/coolest_thing_made_in_pa/

But as many incredible things as we make today, we know we are just scratching the surface when it comes to truly capturing the economic opportunity of pairing our historic leadership across these sectors with our excellent institutions of trade, technical and higher education – and leveraging that with technology and innovation and financing from our robust network of financial institutions. As noted by the Brookings Institution², we excel at the early stages of research and development across a number of high-value, high-tech industries, but too often have lost out on the full supply chain and manufacturing gains due to our uncompetitive statewide public policies.

We want this to change, and know that this committee does as well. We are also extremely encouraged to have heard Governor Shapiro note in his budget address that “the permitting process takes too damn long,”³ and we are pleased that he has already established an office to streamline critical projects through state government approvals. The Governor has mentioned a desire to execute streamlined permitting decisions as among his criteria for cabinet selections to key agencies.

This builds upon the House and Senate in recent sessions having passed legislation to reform and streamline the permitting process⁴, and we stand in agreement with the building trades that getting through red tape faster means greater opportunity for business, labor and working families.

The Governor's statements and early initiatives are encouraging, and we need to build on this momentum in a bipartisan manner. We appreciate the promise of a “money-back guarantee” if an agency lapses past a permitting timeline, as the Administration has proposed. Ultimately, businesses want predictability and answers, and, ultimately, the permit. Lending institutions will not issue financing without a permit.

It cannot be lost what another Governor said recently about our permitting process. When we lost out on a huge investment in the next generation of steel mills to Arkansas, Gov. Hutchinson crowed that they would be built faster than Pennsylvania could permit them.⁵

The state lost out on a major petrochemical expansion in the southeast due to a lack of infrastructure and an associated protracted permitting process.⁶ We were not in the running for a semiconductor manufacturer because of site availability.⁷ Other manufacturers that produce life-sustaining medicine and consumer goods have reported that our state's process to permitting significantly lowers the

² Commonwealth of Innovation. Brookings Institution, October 2022.

<https://www.brookings.edu/research/commonwealth-of-innovation-a-policy-agenda-for-revitalizing-pennsylvanias-economic-dynamism/>

³ 2023 Budget Address. Office of Governor Josh Shapiro, March 7, 2023.

<https://www.governor.pa.gov/newsroom/governor-shapiros-2023-budget-address-as-prepared/>

⁴ See, e.g., from the 2021-22 legislative session House Bill 139 and Senate Bill 28.

⁵ “Governor: Arkansas builds steel mills faster than Pennsylvania would permit one.” ABC7 KATV, May 12, 2022.

<https://katv.com/news/local/governor-arkansas-builds-steel-mill-faster-than-pennsylvania-would-permit-one-asa-hutchinson-trucking-associations-annual-conference-vendor-showcase-hot-springs-us-president-ceo-david-burritt-osceola-jobs-growth-agenda-election-talk-business-politics-tbp>

⁶ Pa. business leaders: Shale gas pipeline buildout needs to step up. Philadelphia Inquirer, Nov. 2, 2016.

https://www.inquirer.com/philly/about/pcom_corrections/399552361.html

⁷ Why Intel Chose Ohio. TechCrunch, June 1, 2022. <https://techcrunch.com/2022/06/01/how-intel-landed-in-columbus/>

likelihood of new investment coming to Pennsylvania as they deliberate internally. Our state's rankings on site selection and best states for business can confirm the same thing.⁸

As businesses domestically look to shore up their supply chains and relocate operations out of Europe (due to high energy costs) and China (due to humanitarian concerns and an untrustworthy authoritarian regime), we have a generational opportunity to welcome that investment to our state – provided we improve our competitiveness and ensure we have a strong, skilled workforce.

From a macro standpoint, we recommend going beyond a “money-back guarantee” for permits and establishing timelines for key projects’ permits that, if not met, result in the permit being deemed approved.

Second, it's vital agencies have the resources to efficiently review permits. Recent federal energy and infrastructure funding bills appropriated significant funds to state governments for staffing and new projects. The legislation also included significant reforms to streamline permitting reviews at the federal level. This is an opportunity for the state to ensure it has the resources to issue permits, as well as to ensure those federal funds are efficiently put to use in the state by modernizing our permitting process. We recommend granting agencies the option of contracting with third-party experts for technical reviews of permits, as is currently done in many other states, including Washington and New Jersey.

Finally, we should give agencies greater confidence in their decision-making by limiting the scope of appeals to issue raised during public comment (which is the standard for federal permits) and limiting when attorney's fees can be awarded. This will prevent a drain on agency resources.

In addition to these holistic reforms, we also recommend a comprehensive regulatory approach that preserves energy choice and competitive markets and that welcomes new technologies like carbon capture storage and sequestration and hydrogen production. Providing greater clarity and certainty to the business community for spill response and heavy trucking emissions also helps improve our business climate for manufacturers and logistics companies.

In closing, we're grateful to see business, labor, and both sides of the aisle agree it's time to fix permitting. At the PA Chamber, we want Pennsylvania to be the 1-seed for new investment and opportunity. But unless and until we become more competitive from a tax and permitting standpoint, modernize our infrastructure, and ensure a skilled workforce, our bracket is going to stay busted.

Thank you for the opportunity to address you this morning, and I look forward to answering your questions.

⁸ See Site Selection Magazine's Business Climate Rankings <https://siteselection.com/issues/2022/nov/the-2022-business-climate-rankings.cfm#:~:text=Tennessee%2C%20North%20Carolina%20and%20Georgia,with%20a%20strong%20business%20climate> and CNBC's Top States for Business <https://www.cnbc.com/2022/07/13/americas-top-states-for-business-2022-the-full-rankings.html>.



Permitting Reform

Improving Pennsylvania's competitiveness will help all our residents, workers, families and businesses have greater economic opportunity. Adopting a more welcoming tax and regulatory policy will benefit our future and lead to the building of a more modernized infrastructure system, establish advanced manufacturing hubs in innovative industries, and continue to provide the energy and goods needed in a diverse, 21st century economy.

The PA Chamber supports the following reforms to help get new projects permitted and built:

Third-Party Review of Permits

With state agencies reporting workforce challenges, we recommend providing permitting agencies be given the option to contract with qualified third-parties to assist with the technical review of permits. Such is the case in states like Massachusetts, Washington and New Jersey.



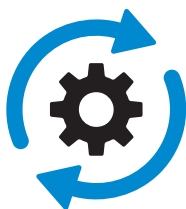
Codify the Governor's One Stop Shop

The PA Chamber stood with Gov. Shapiro, his cabinet and leaders from business and organized labor for the signing of an executive order to establish a one-stop shop to streamline permits for key projects. We recommend codifying this office into statute to provide long-term durability to the approach.



Streamlined Permit Appeals

Once a permit is issued, it is possible the decision is challenged in court. We recommend limiting the scope of review for permit challenges going before the Environmental Hearing Board to only those issues raised during public comment. This is the approach used for most federal environmental statutes. If it's important enough to sue over, it's important enough to have raised during public comment.



Stop Draining Agency Resources

Permit review times are protracted in part because of DEP, should it lose a permit appeal, potentially being on the hook for attorney's fees, which activist groups use as a source of funding. We support state government having the resources to do its job by limiting awarding of legal fees only in cases of bad faith.



Shot Clocks and Deemed Approved

Timely permit decisions are necessary to get projects financed and built. We recommend a set timeframe for permits to be reviewed and issued — and be "deemed approved" if the agency does not make a decision in the time defined in statute.



Thank you, Chairman Kail and members of the committee.

I'm David N. Taylor, President & CEO of the Pennsylvania Manufacturers' Association, the statewide not for profit trade organization representing the people who make things here in the commonwealth. I appreciate the chance to speak with you, and I thank the previous presenters for their very helpful testimony.

Manufacturing is the engine that drives Pennsylvania's economy, adding \$92 billion in value every year, directly employing over a half-million Pennsylvanians, and sustaining millions of additional Pennsylvania jobs through supply chains, distribution networks, and industrial vendors.

Because the manufacturing sector adds the most value, manufacturing jobs offer the best wages and benefits in the marketplace. The manufacturing process also has the strongest multiplier effect on job creation. Additionally, manufacturing employers are significant local taxpayers, sustaining the local tax base and funding important local services. As we all know, a community that loses its factory is a community facing significant decline. This is why Pennsylvania's policymakers should be interested in the health of our manufacturing economy and how state policy decisions affect the competitiveness of our business environment.

The burden of regulatory compliance is a critical area of business competitiveness where Pennsylvania needs to improve. Governor Shapiro has spoken about the need for Pennsylvania to move at the speed of business, in addition to the importance of regulatory reform, so we are hopeful that slashing red tape and accelerating permits can become a point of bipartisan consensus.

The governor has also issued an executive order that application fees should be refunded when permits are not approved on time. This customer-focused view of government functions is a welcome change and we thank him for it, although it does not get quite as far as we need to go. After all, what the applicant really needs is the permit itself, because no productive activity can occur until after that state permit or license is in hand.

Many times investors are burning daylight and their limited capital waiting to get an OK from Harrisburg, endangering the planned projects and all of the jobs and economic dynamism that would come with them.

To get state government permitting on track, there are several things to be done:

- When applications are not reviewed within the legal time limit, those applications should be automatically "deemed approved" and issued to the applicant.
- Although I am told that there are specific liability complications that Pennsylvania will have to address first, many other states have contracts with third party vendors to undertake the review function for permits and licenses. If the vendor fails to keep up, the state then hires a new vendor to keep approvals current.
- Too often, state agencies continue to hike permit fees, allocate the money to other functions, and then cry poor when asked why permits are not processed in time. State agencies should be required to dedicate permit fees to permit processing until and unless there is no permit backlog and all permits are being processed by the legal deadline.

When it comes to the larger issue of regulatory reform, let me be clear that no one is saying there shouldn't be rules; of course there should be. However, those rules should be based on sound science and should be subjected to a meaningful and independent cost/benefit analysis. In environmental compliance, the continuous ratcheting of standards to capture the last molecule of emissions pushes us past the point of diminishing returns. Under that dynamic, costs soar ever higher as any potential benefit grows ever smaller. This approach is wasteful, counterproductive, and contrary to good sense, especially when Pennsylvania has led the nation in reducing emissions.

To improve Pennsylvania's approach to regulations and permitting, there are many opportunities I would urge lawmakers to consider:

- Because the public good that results from regulations is compliance, the state's regulatory agencies should be partners in compliance. Of course, willful and deliberate abuses should result in fines and penalties, but Pennsylvania citizens and businesses that are attempting to comply in good faith should be corrected when they err, not punished. The "gotcha" mentality of state regulatory agencies is unhelpful and lawmakers should give them an attitude adjustment.
- In the absence of a Pennsylvania-specific reason, state regulations should not be allowed to be made stricter than federal regulations. The state regulatory agencies shouldn't be allowed to turn the screws on the rest of us just because they feel like it.
- Rules that Pennsylvanians must obey should be issued ONLY by the proper Pennsylvania authority that is accountable to our citizens. No one has the right to outsource our sovereignty. It is absolutely unacceptable and borderline insane for us to allow legislatures or bureaucracies from OTHER STATES to impose rules on our people.
- Regulations should be reviewed on an ongoing basis to ensure that they are functioning as intended, are cost-effective, and are still necessary. Regulations that are found to be dysfunctional, overly expensive, or no longer needed should be revised or expunged. As it stands, state government only ever adds new rules, and no one ever goes back to see whether we still need them. An "Office of the Repealer" has been proposed in previous legislative sessions and I hope that concept is revisited soon.
- The total cost of regulatory compliance should be calculated and published annually. Furthermore, once that process is institutionalized, the General Assembly should establish a process of regulatory budgeting whereby new regulatory costs must be offset with regulatory reductions so that the process of compliance does not continue to increase without limit.
- Regulations that impose a significant economic cost on the citizenry should require approval by the General Assembly in order to go into effect. Governor Wolf's attempt to impose an electricity tax by executive fiat is a perfect example of why this policy is needed. A threshold of a million dollars in costs might be appropriate for this purpose, although others might suggest a different trigger point. Regardless, the bureaucracy should not have the ability to impose unlimited costs on the public and the costliest rules should require legislative approval.

Beyond these potential changes in state law, I would also urge lawmakers to craft legislation in a manner that minimizes the discretion of the regulatory agencies. Too often, bills are approved that point toward particular policy goals but allow the bureaucracy great latitude in promulgating the specific

rules with which the public must comply. Don't give the bureaucrats the chance to misrepresent your legislative intent.

I want to close with a few observations. Oftentimes, the radical Green groups refer to our industrial employers as "polluters", by which they mean that -- despite the almost unlimited time, energy, effort, and money spent by those businesses to comply with the strictest DEP and EPA regulations -- their emissions, while within legal tolerances, are above zero. This is an appalling slander of the productive sector by anti-production grievance groups that make nothing except noise, add no value, risk nothing, and employ no one except a handful of professional doomsayers. Zero emissions means zero industrial activity. No jobs, no wages, no benefits, no value added, no taxes paid.

These radical Greens celebrated when U.S. Steel was denied a critical permit to build a natural gas pipeline that was central to the \$1.5 billion modernization plan for the Edgar Thomson Plant in Braddock and the Clairton Coke Works. Ultimately, that plan was pulled, meaning that our skilled tradesmen in western PA missed out on more than one million man-hours that they were not able to work. How many mortgage payments, trips to the grocery store, tuition payments, and utility bills would have been paid by the wages from that work, if only our working people had been allowed to do their jobs?

The ultimate irony is that U.S. Steel's modernization plan would have REDUCED EMISSIONS, improving local air quality and making the Mon Valley Works more compliant with state and federal regulations.

That radical anti-production mindset has taken hold inside many of not all of our state regulatory bodies, which poses a direct threat to Pennsylvania's prosperity and the material well-being of our people.

As lawmakers you have both the opportunity and the responsibility to rebalance the scales and defend the separation of powers.

On behalf of Pennsylvania's manufacturing employers, I thank the committee for its interest in this important subject and I will do my best to answer your questions.