PMA

The Bulletin

June 22, 2012

Broad Bipartisan Business/Labor Coalition Urges Approval of Manufacturing Tax Credit

Pennsylvania's statewide business groups joined with union leaders and legislators of both parties this week to urge the General Assembly to approve Governor Tom Corbett's innovative manufacturing tax credit proposal. The credit will cement a deal with Royal Dutch Shell for the energy giant to build a $4 billion state-of-the-art petrochemical plant in southwest Pennsylvania, launching a new manufacturing industry based on products derived from Marcellus Shale natural gas.

The Governor wants the credit to be enacted as part of the 2012-2013 General Fund budget negotiations. On June 21, House and Senate leaders announced they reached an agreement with the Governor on the total amount of spending -- $27.656 billion -- but they must still negotiate the final details on how those monies will be appropriated.

The Governor's tax credit, $66 million a year for 25 years starting in 2017, would ensure that a subsidiary of Royal Dutch Shell builds the facility near Pittsburgh. The plant will convert Marcellus Shale gas liquids to ethylene, a building block for plastics and other synthetics. Although Shell bought an option on a former zinc plant in Beaver County, the company's review process is ongoing and construction will not begin for some time.

"We are still very much in competition with West Virginia and Ohio for this multi-billion dollar private-sector investment," said David N. Taylor, Executive Director of the PMA. "The Corbett Administration's manufacturing tax credit proposal is the critical missing piece needed to see this project through to completion."

"Remember," Taylor said, "Pennsylvania gets the $4 billion private-sector investment up-front, the credit only gets awarded if and when industrial production occurs, and the credit will be a discount on future tax collections that won't exist if we don't succeed in landing the plant in the first place. Because the facility is too large, expensive, and environmentally impactful to ever be moved or shut down, the investment in Pennsylvania would be permanent. And because the credit can only be used against Pennsylvania tax liability, we will be able to capture almost all of the manufacturing activity that results from this new industrial sector. If built as planned, it will be the only petrochemical facility of its kind in the northeast United States; the synergy from co-location by manufacturers using the feedstock produced there is almost beyond imagining. It is the exceptionally rare situation where there is no downside."

The chemical industry estimates the plant will create 10,000 construction jobs, hundreds of full-time plant jobs, and thousands of additional spin-off jobs. "The chemical industry association

ACC (American Chemistry Council) has done studies that estimate a ‘multiplier effect’ of 5.5 for induced and indirect jobs,” wrote Kayla Macke, Media Relations Coordinator for Shell.

Shell’s interest in building the plant brings other good news as well, according to Geoffrey Styles, a well-respected consultant to the oil and gas industries. “Shell is very meticulous in its planning,” Styles said. “And wouldn’t be considering this magnitude of a plant unless they really believed supplies would be there for the long term.”

Earlier this week, the Governor joined industry and labor leaders at a press conference in Harrisburg to push for approval of the credit. At the news conference, advocates included state representatives and senators of both parties, state and local manufacturing and business leaders, officials from organized labor, as well as Lt. Governor Jim Cawley, Secretary of Labor & Industry Julia Hearthway, Revenue Secretary Dan Meuser, and Allegheny County Executive Rich Fitzgerald.

Officials with the PMA, the Pennsylvania Chamber of Business and Industry, the National Federation of Independent Business, the Chemical Industry Council, and the Pennsylvania Business Council signed an open letter to state lawmakers asking them to approve the credit, which would be earned by manufacturers based on their production of ethylene.

“These guarantees will ensure a wise investment of state dollars and a positive return on investment for all Pennsylvanians,” the letter stated. “In addition, multiple Pennsylvania employers stand to benefit from reduced taxes through the ability to purchase credits from Shell on the secondary market. These are savings that can be reinvested in growing their business and hiring.”

PMA sent an additional pro-tax credit communication the General Assembly in partnership with the Manufacturers and Business Association, the Northeast Pennsylvania Manufacturers and Employers Association, SMC Business Councils, and representatives of the metals manufacturers of southeastern Pennsylvania.

State Store Privatization Off Until Fall

The control of the sale of wine and spirits will remain in the state’s hand at until at least the fall after House Floor Leader Mike Turzai (R-Allegheny) said he lacked the votes to send a privatization plan to the Senate. Turzai’s hard fight for a vote included a three-hour floor debate two weeks ago where he presented yet another option for getting the state out of the liquor business, but he was stymied by pro-union members in his own caucus and divisions among industry stakeholders.

“It can’t become a distraction from the budget process,” Turzai said in conceding he fell short of the votes. Lawmakers face a June 30 deadline to approve a spending plan for the 2012-13 fiscal year. They will then recess for the summer and return to Harrisburg in late September.

Turzai said he will resume the fight for a vote in the Fall but he is likely to have an even tougher going. Members face re-election in November, which historically lessens the number of session days available for votes on substantive legislation. House and Senate leaders, moreover, say they won’t schedule session days during sine die – the period after the November elections but before 2011-12 session ends on November 30. One member of leadership predicted the House would be in for only 12 days of session in the fall.

The latest proposal, for instance, would have given the state's 1,100 beer distributors the first right of refusal on licenses to sell spirits and wine. But some distributors objected to the cost and some to the change in their business plans. "Some are doing all right just the way it is so why should they change," said one House member about beer distributors in his district.

Privatizing the stores has long been goal of the PMA and other groups that believe the state has no right being in a business best served by private enterprise.

"Reform is inevitable," said PMA Executive Director David N. Taylor. "Leader Turzai is to be commended for his resolve, which will soon be vindicated. Like the Soviet system it is modeled on, our government-owned and -operated liquor monopoly is headed for the ash heap of history."

Legislation Would Reduce "Friction" Between Government and Small Business

Two bills on the move in the General Assembly would help ease the regulatory burden on small businesses, and allow for better monitoring of permit rules and applications.

"Both bills will make it easier for small business to deal with state government agencies," said Kevin Shivers, State Director for the National Federation of Independent Business (NFIB) Pennsylvania. "They will help reduce the friction between business and government."

The Senate approved HB 1349, which would require state government to review the financial impact of proposed regulations on small businesses before the regulations are enacted. If the rules will increase costs, the agency is required to seek an alternative. The House unanimously concurred with Senate amendments, sending the bill to Governor Corbett for his signature. The reform was vetoed on two previous occasions by Governor Ed Rendell.

"Tina Pickett (Republican State Representative, Bradford County) has worked on this for ten years," Shivers said. "We need to give her all the credit in the world for seeing this through."

In a separate move, the Senate Community, Economic and Recreational Development Committee approved HB 2022, which creates the Pennsylvania Business Permitting Portal. The bill makes it easier for small businesses to apply for permits and to follow the application process online.

Can Philadelphia Climb Out Of Its Judicial Hellhole?

A recent change in the rules governing mass tort cases in the Philadelphia judicial system might help the city avoid a 'judicial hellhole' designation from the American Tort Reform Association (ATRA) for the third year in a row, according to leading business defense attorney Mark A. Behrens, with the Washington D.C. office of Shook, Hardy & Bacon.

"Rule changes in February should help reduce the number of mass tort cases filed in Philadelphia from outside its jurisdiction," Behrens said. "But I'm saying that with some caution because we might see a pull-back on one of those rules."

Common Pleas Court Judge, John W. Herron, orchestrated three key rule changes for mass tort cases; cases that Behrens said almost always involved asbestos or pharmaceuticals. One change limits the consolidation of unrelated tort cases. Another rule ends reverse bifurcation, a practice that Behrens said is like going to the sentencing phase of a trial before being found guilty.

Behrens noted the court might be backtracking on one of the rules, disallowing punitive damages in pharmaceutical suits. “Not allowing punitive damages has been the practice for years in asbestos cases because you would bankrupt the companies and some victims would receive no compensation,” Behrens said. “The rule change in February initially included pharmacy cases but now it appears the court might reverse that move.”

Behrens and Pennsylvania business leaders hope the changes at least slow down an alarming trend of cases filed in Philadelphia that originate outside the city. In 2010, Philadelphia hosted almost 21 percent of the Commonwealth’s total civil-action docketed cases, while the city accounts for 12 percent of the population.

As noted by Judge Herron, the percent of out-of-state claims in Philadelphia’s Complex Litigation Center, which handles mass tort claims, constituted about one-third of filings from 2001 to 2008, “soared” to 41 percent in 2009, and “reached an astonishing” 47 percent in 2011.

On another front, legislation awaiting action in the General Assembly would likewise help reverse the trend. HB 1976 restricts legal action in tort cases to the county where the alleged injury occurred or where a business is located – ending the practice of shopping for the most favorable venue for the plaintiffs and their lawyers. Unfortunately, that legislation is stalled in the House.

Check out Mark Behrens opinion piece from the Philadelphia Inquirer on June 3, 2012 entitled “Pa.’s Model for Commonsense Tort Reform.”