A Message from PA Chamber President Gene Barr

Through the support of our membership that is nearly 10,000 strong, the PA Chamber celebrated several notable achievements throughout the 2017-18 legislative session – the details of which you’ll find in this comprehensive End of Session report.

Our organization accomplished several key items on our pro-business agenda that are strengthening our economy and improving the quality of life for all of the Commonwealth’s citizens. Most notably, we’ve achieved a pension reform law that is a first great step to right-sizing the state’s bloated public pension systems; along with two years of balanced budgets WITHOUT broad-based tax hikes – no easy feat in an era where the governor continues to call for another punitive severance tax on Pennsylvania’s natural gas industry. We were also able to celebrate the enactment of a bonus depreciation bill that reversed a Dept. of Revenue policy which made Pennsylvania the only state in the nation to disallow any form of accelerated depreciation until an asset was disposed of or sold. Also, a legislative fix to the state Supreme Court’s decision in the recent Protz case will end up saving upwards of $300 million a year in workers’ comp costs for the Commonwealth’s job creators.

As we head into the 2019-20 session, we’re making our case for a series of robust tax reforms that will help the state achieve the same economic gains that have been realized at the federal level through the enactment of the Tax Cuts & Jobs Act. Topping our legislative priority list will be reducing Pennsylvania’s Corporate Net Income Tax rate, which at 9.99 percent is the highest effective rate in the nation and raises a major red flag for would-be investors.

The legislative dynamic will be altered as dozens of new elected officials will be sworn into the state House and Senate on New Year’s Day. The PA Chamber is ready to greet these new members at our upcoming ChamberPAC Freshman Breakfast in February and prepared to get to work on our tax reform agenda along with a number of other pro-growth policies. We’ll continue to rely on your feedback and support as we strive to build a stronger economy here in Pennsylvania.

Thank you,

Gene Barr
**Pension Reform (Act 5 of 2017)**

After years of working with lawmakers to address Pennsylvania’s greatest fiscal liability – the public pension crisis – elected officials passed and Governor Wolf signed legislation that takes an important first step toward ensuring that the State Employees Retirement System and the Public Employees Retirement System can remain sustainable for future generations of state and public school employees.

Act 5 of 2017 offers a selection of three new retirement plans for state and public school employees hired after 2018, along with an opt-in for current employees to enroll in any of the three plans. The choices include two hybrid, “side-by-side” retirement plans that include both a defined benefit and a defined contribution, 401k-style component; and a defined contribution-only option.

The PA Chamber had long advocated for reforms to help slow down the growth of a pension debt that had climbed to as high as $74 billion, and shift some of the risk of the potential future debt burden off of taxpayers. While Act 5 helps to achieve these goals, it doesn’t address the long-term unfunded liability – an issue on which our organization will continue to advocate, as SERS and PSERS obligations take up a significant amount of General Fund revenue each year.

**Budget**

**2017-18 Budget**

In his third budget address Gov. Tom Wolf again proposed a number of tax increases in order to pay for more government spending. The plan included an expanded Insurance Premiums tax; broadening the state sales tax base to a range of currently exempt goods and services; enacting an additional tax on the natural gas industry; and making several harmful changes to the way that corporations file their taxes and calculate deductions. While the governor allowed a $32 billion spending plan to become law without his signature in July of 2017, it wasn’t until the end of October that lawmakers finally coalesced around a revenue plan that would pay for it.

The PA Chamber successfully defeated attempts to enact up to $1 billion of proposed tax increases on Pennsylvania residents and job creators. The final revenue package relied heavily on $1.5 billion in borrowing from the Tobacco Settlement Fund; as well as $500 million in one-time fund transfers; a fireworks tax; and requiring online marketplace facilitators to collect and remit sales tax.

**2018-19 Budget**

The PA Chamber once again fought off a Wolf-proposed severance tax and government-mandated wage hike in the current year’s budget. The final spending plan, which was signed on June 22, 2018, marked the first time in more than three years that the Commonwealth started the new fiscal year with an enacted spending plan in place. With state revenues on an upswing (thanks in large part to sweeping tax reforms at the federal level), the four legislative caucuses and the Wolf administration were able to come to an agreement on a $32.7 billion budget that increased spending by 2 percent over the previous fiscal year. Notably, the final plan did not include any tax increases.

**Combatting More Than $1 Billion in Proposed Tax Increases**

On October 30, 2017, a months-long budget impasse came to an end when Gov. Tom Wolf signed into law several revenue bills to pay for the $32 billion spending plan that was approved in July for the 2017-18 Fiscal Year. Notably absent from the final deal were a number of proposed taxes that the PA Chamber had spoken out against throughout the budget negotiation process: a severance tax on natural gas drillers; new taxes on commercial and residential natural gas users; increased taxes on electric and phone bills; a new hotel tax; a commercial warehouse storage tax; an insurance premiums tax and a technology tax.
Taxes

Increasing the Cap on Net Operating Loss Carryforwards

In the state Supreme Court’s 2017 Nextel case, the Court severed the $3 million cap from the percentage cap that applied to Nextel in 2007, leaving open the possibility that corporations that had used the hard dollar cap to calculate their net loss carryovers might still owe taxes for years that were not barred by the statute of limitations. At that time, the PA Chamber filed an amicus brief in favor of uncapping the NOL; we eventually were able to increase the cap from 30 percent to a more competitive 40 percent – a move that especially helps small-sized and cyclical businesses.

Bonus Depreciation (Act 72 of 2018)

In response to the Federal Tax Cuts and Jobs Act that was signed in December 2017, the Pennsylvania Department of Revenue issued a tax bulletin days later that prohibited corporations from depreciating purchases until an asset was disposed or sold. This put Pennsylvania at an immediate competitive disadvantage, as it was the only state in the nation that implemented this type of policy. For the six months that followed, the PA Chamber advocated heavily for Act 72, which reversed the department’s misguided ruling. Now, Pennsylvania provides for allowable methods of depreciation which have provided a much-needed improvement to the Commonwealth’s tax structure and its overall competitiveness.

Local Tax Enabling Act (Act 18 of 2018)

This new law streamlines local tax collection procedures, bringing more clarity and simplicity to the process of reporting the local Earned Income Tax. Additionally, Act 18 bans the use of contingency fee collectors in the collection of the tax.

Mobile Telecomm Services (Act 52 of 2018)

Prior to the enactment of Act 52, the definition for telecommunications in the Pennsylvania Tax Code had remained unchanged for approximately 15 years. During that time period, telecommunication technology drastically changed. This law updates the definition, creating uniformity within the state’s Tax Code and clarifying outdated sections of the Code.

Air Freight Taxation (Act 131 of 2018)

Signed into law in the waning days of the 2017-18 legislative session, this measure ensures the equal treatment of air freight companies under Pennsylvania tax law.

More than 100 local chamber representatives heard from policy and political experts, networked with their peers and engaged in important business advocacy discussions during 2018 Chamber Day at the State Capitol in early June.
Federal Tax Reform

In December 2017, President Donald Trump signed into law the most sweeping national tax reforms in more than 30 years. The federal tax overhaul made a number of welcome and long overdue changes that signaled to the world that the United States was open for business. This included a dramatic reduction in the nation’s corporate tax rate from a highly uncompetitive 35 percent rate to 21 percent, along with lower taxes for small business owners and the majority of U.S. taxpayers to help stimulate economic growth. In addition, the Act implemented other policies for which the PA Chamber has long advocated, including simplifying what was an overly complicated and burdensome Tax Code; giving “pass through” companies a 20 percent reduction in their income; moving to a territorial tax system so that businesses are only taxed on the income they earn within the United States’ borders; and allowing for the full, immediate expensing of capital investments to help free up a company’s cash flow and devote more resources toward job creation.

The uncompetitive nature of the country’s federal tax structure has had repercussions for every state — but particularly in Pennsylvania, due to the fact that we have one of the highest effective Corporate Net Income tax rates in the nation. This pro-growth reform legislation will help reverse decades of missed economic growth opportunity and improve our country’s competitive edge.

— PA Chamber President and CEO Gene Barr

Regulatory and Permitting Reforms

Online Permitting Portal (Act 107 of 2018)

Act 107 directs the state Department of Community and Economic Development to create a one-stop-shop online permitting portal for businesses, in order to help streamline and bring efficiency to existing permitting processes. Such efforts have already been employed with success within the Department of Environmental Protection, which has moved to e-permitting in a number of its programs. Additional deployment and use of this type of technology across all of DEP’s permit programs will allow for better use of taxpayer resources and improve consistency and regulatory certainty for the business community.
Opposing DRBC Moratorium, H.R. 515

In 2009, shortly after the natural gas industry got its start in the Commonwealth, the Delaware River Basin Commission determined that all natural gas drilling in the basin needed to be reviewed, saying it would not approve any development until it adopted new rules governing the industry. The next year it decided to postpone the review of natural gas development and has failed to act on adopting new rules, leaving in place a de facto moratorium that bans energy development in 16 Pennsylvania counties and is financially devastating to the state’s economic growth and competitiveness. This PA Chamber-backed resolution – which was adopted in the fall of 2017 – urges the DRBC to suspend further consideration of a moratorium and confine its regulatory activities to its historical focus on water withdrawals within the basin. The Commission’s authority to issue the de facto moratorium is currently being challenged in court.

Steel Slag for Manufacturing (Act 7 of 2018)

This important pro-growth measure eliminated the designation of steel slag as waste if it is sold commercially. Act 7 benefits the growth of one of Pennsylvania’s most important and historic industries – steel manufacturing – and encourages the practice of reuse and recycling of industrial materials.

Labor, HR & Employment

 Legislation to Address Opioid Addiction Among Injured Workers Vetoed (S.B. 936)

In late April 2018, Gov. Tom Wolf issued his veto of S.B. 936 – critical legislation that would have helped address PA’s ongoing opioid addiction crisis by implementing a prescription drug formulary within the state’s workers’ compensation system.

Formularies are standard in healthcare and states that have established them within workers’ comp have seen a notable decrease in the number of opioid-dependent injured workers. The PA Chamber was at the forefront of a broad-based coalition of supporters for this bill, including medical associations, addiction treatment professionals, and other groups representing employers, school districts and municipalities, as well as more than 70 local chambers of commerce.

The governor’s veto message was especially concerning in light of revelations in a series of investigative articles by the Philadelphia Inquirer, which described allegations involving a workers’ compensation law firm that partnered with a small network of doctors to prescribe their clients exorbitantly priced and unproven compound creams; and then sent these unsuspecting patients to pharmacies that were co-owned by the lawyers and doctors themselves. The articles exposed these individuals as the opponents aggressively fighting to defeat S.B. 936.

A statewide billboard campaign was part of the PA Chamber’s robust advocacy efforts in support of S.B. 936.
Workers’ Comp Fix to Save Employers $300 Million a Year (Act 111 of 2018)

Last year, the state Supreme Court ruled in the Protz v. Workers’ Compensation Appeals Board case to remove Impairment Rating Evaluations from the law based on a technicality. For more than 20 years, IREs brought structure and fairness to the process of determining circumstances in which claimants can reasonably be expected to transition back to work and when benefits should be paid for the rest of an individual’s life. This decision led the Pennsylvania Compensation Rating Bureau to take the unprecedented action of filing for a mid-year loss cost increase, which industry experts are conservatively estimating is costing employers $300 million annually in higher insurance costs.

Enacting a legislative fix was a PA Chamber priority ever since the Court’s ruling. Act 111 addresses the Court’s concern by updating the law with the most recent edition of the American Medical Association’s impairment guides. The end result is a law that will save the business community hundreds of millions of dollars each year and restore predictability to the law.

UEGF Bill (Act 132 of 2018)

Act 132 of 2018 is related to the Uninsured Employers Guaranty Fund, which covers medical and wage benefits for injured workers whose employers do not have workers’ compensation coverage. With the fund insolvent and forced to borrow money, this new law will provide additional funding for the UEGF and reforms to help reduce costs, including allowing the Department of Labor and Industry to establish a list of designated health care providers. The bill also provides stronger tools to help pursue and penalize negligent employers whose failure to purchase workers’ compensation coverage increases costs on other employers. These reforms will go a long way toward addressing the solvency of the fund.

Next session, the PA Chamber will work toward additional reforms to the UEGF to further strengthen the fund and ensure it can remain a safety net for injured workers who have the misfortune of working for an irresponsible employer.

Combatting Proposed Overtime Rule Change

In June 2018, the PA Department of Labor and Industry proposed new rules regarding employees’ eligibility for overtime pay, which would more than double the minimum salary threshold and require regular increases. While the proposal initially indicated a desire to align federal and state overtime guidelines – which the PA Chamber strongly supports – the actual regulatory language unfortunately fell far short of this worthy goal and even exacerbated challenges for employers. In many respects, the proposed rule resembled a failed 2015 Obama era proposal that was resoundingly opposed by the employer community and many workers who would be forced to convert from salary to hourly status. The PA Chamber led a statewide effort to convey employer concerns with the proposed rule: First, by organizing a broad coalition which successfully persuaded the department to double the time period in which members of the public could submit comments to the Independent Regulatory Review Commission; second, by facilitating the submission of hundreds of comments to help ensure that IRRC understood employer concerns; and finally, the PA Chamber itself submitted extensive comments. Ultimately, IRRC issued its response to the proposal outlining numerous concerns, questions and suggestions that closely aligned with the PA Chamber’s perspective and those of many in the employer community. The Department will be required to respond to IRRC should they choose to proceed with a final proposal.
**Workforce**

“Clean Slate” Bill (Act 56 of 2018)

This law removes a barrier to work by providing a mechanism for those with low-level, nonviolent criminal records to have their record sealed from public view. More than one-third of Pennsylvania’s working-age citizens are estimated to have criminal records. Act 56 helps to address the Commonwealth’s workforce needs by making it easier for those individuals who have learned from past mistakes to enter the workforce.

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**General Commerce**

Price Gouging Act Reforms

Senate Bill 1172, which had bipartisan support this session, aimed to address employers’ concerns about the Price Gouging Act and the automatic triggering of price controls on all household and consumer goods and products statewide whenever the governor issues a disaster declaration. Under current law, any business that raises prices in the state throughout the duration of the declaration plus 30 days thereafter may be vulnerable to enforcement action by the state’s Attorney General’s office.

The need to reform the Act was made evident through the Wolf administration’s recently renewed disaster declarations to combat the heroin and opioid epidemic, as well as the fact that price restrictions are in effect for the summer as a result of late winter snowstorms. Senate Bill 1172 would have limited the duration of pricing restrictions to 15 days, with extensions up to 60 days, and limited their scope to those goods and services necessary for use or consumption; among other changes that would have offered more clarity and certainty to employers.

Following the governor’s action on the bill, a diverse coalition of leading business and trade associations issued a joint statement expressing dismay with the blanket veto of overwhelmingly bipartisan legislation and vowed to continue the work to address this important issue.

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**Education**

“Last In, First Out” Reform (Act 55 of 2017)

Legislation that relieved schools of burdensome “last-in, first out” employment policies that prevent school districts from retaining their best teachers was adopted in a budget-related, omnibus Education Code bill in 2017.

This measure reformed the antiquated practice of school districts making seniority the sole factor in determining which teachers to furlough when they were faced with the unfortunate decision to do so.

This provision within Act 55 gives school leaders the ability to take a teacher’s overall effectiveness into account when making difficult furlough decisions. The PA Chamber long supported this measure, as it helps to ensure that students in Pennsylvania have access to the No. 1 in-school factor that influences their education: a quality teacher in the classroom.

Keystone Exam Alternative Requirements (Act 158 of 2018)

Legislation that will expand options for fulfilling high school graduation requirements in Pennsylvania was signed by Gov. Wolf in the closing days of the 2017-18 session.

Act 158 provides students alternative pathways to fulfill graduation requirements besides the Keystone Exams, including a career and technical education path. The PA Chamber understands that Pennsylvania students are a diverse group and that graduation requirements can and should, to a certain extent, reflect that diversity. In addition, the PA Chamber’s 28th Annual Economic Survey that was released in October 2018 showed that employers cited finding qualified and skilled job candidates to fill open positions as their No. 1 issue – which our organization is addressing through our comprehensive workforce development initiative, Start the Conversation Here. In joining with education and child welfare groups in support of the bill, we urged lawmakers to engage in oversight and ensure that the standards in the legislation are being met.