

# Regulatory Analysis Form

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

(1) Agency

Department of State, Bureau of Professional and Occupational  
Affairs, State Board of Funeral Directors

(2) I.D. Number (Governor's Office Use)

16A-4810

IRRC Number: 2397

(3) Short Title

Limited license

(4) PA Code Cite

49 Pa. Code, §§ 13.1, 13.12, 13.77

(5) Agency Contacts & Telephone Numbers

Primary Contact: **Thomas A. Blackburn, Counsel,**  
**State Board of Funeral Directors (717) 783-7200**

Secondary Contact: **Joyce McKeever, Deputy Chief**  
**Counsel, Department of State (717) 783-7200**

(6) Type of Rulemaking (check one)

☐ Proposed Rulemaking

☒ Final Order Adopting Regulation

☐ Policy Statement

(7) Is a 120-Day Emergency Certification  
Attached?

☒ No

☐ Yes: By the Attorney General

☐ Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The regulation implements the issuance of limited licenses, as authorized by the act of June 22, 2000 (P.L. 376, No. 48) (Act 48). A limited license authorizes a funeral director from another state to enter into Pennsylvania for the purpose of removing, transporting and burying dead human bodies and directing funerals. A limited license does not authorize the out-of-state funeral director to maintain an establishment or to hold himself or herself out as a funeral director in Pennsylvania.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The regulatory amendments are adopted under Sections 9(c) and 16(a) of the Funeral Director Law (Act), Act of January 14, 1952 (P.L. 1951-1898) as amended, 63 P.S. §§ 479.9(c), 479.16(a).

## Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

**Yes. Act 48 added Section 9(c) to the Act and authorized the Board to enter into an agreement with the licensing authority of another state to permit limited licenses. Act 48 also authorized the Board to promulgate regulations to implement the issuance of limited licenses, including the establishment of fees.**

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

**In enacting the limited license provisions of Act 48, the General Assembly recognized the compelling public interest in permitting a funeral director licensed in another state to enter Pennsylvania for limited purposes.**

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

**The General Assembly recognized the public health, safety, environmental or general welfare risks associated with nonregulation when it enacted the limited license provisions of Act 48.**

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

**A funeral services customer who requires that the decedent be brought across the state line for removal from Pennsylvania or burial in Pennsylvania will benefit from being able to utilize the services of the out-of-state funeral director with a limited license in Pennsylvania. An out-of-state funeral director who received a limited license will benefit by being able to provide these services. Pennsylvania funeral directors who obtain equivalent limited licenses in other states and funeral services customers will receive similar benefits under Act 48.**

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

**Pennsylvania funeral directors may lose removal or burial business to out-of-state funeral directors who obtain limited licenses in Pennsylvania. However, many out-of-state funeral directors are already fully licensed in Pennsylvania and currently provide the services discussed in response to questions 13 and 14, so the loss of business to Pennsylvania funeral directors might not be significant. The Board has identified no other group of individuals or entities that will be adversely affected by the regulation.**

## Regulatory Analysis Form

(15) List the persons, groups or entities that will be required to comply with the regulation.  
(Approximate the number of people who will be required to comply.)

**All persons seeking to obtain a limited license in Pennsylvania will be required to comply with the regulation. The Board has not yet entered into any agreements with other states to permit issuance of limited licenses and cannot approximate the number of people who would apply for a limited license.**

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

**In June, 2001, the Board solicited exposure draft comments from the Pennsylvania Funeral Directors Association (PFDA) and all individuals who had attended any Board meeting during the preceding year. PFDA commented that the Board should clarify whether the continuing education it refers to in § 13.77(b) is in Pennsylvania or another jurisdiction. The Board received no other comments on this exposure draft.**

**The regulation was published as proposed in the Pennsylvania Bulletin on April 10, 2004. The Board received only a single comment, and that comment from the House Professional Licensure Committee addressed only a technical drafting point.**

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

**The appropriate members of the regulated community are those funeral directors licensed in other states whose licensing authorities have entered into agreements with the Board and who desire to obtain limited licenses in Pennsylvania. These persons will be required to complete an application, pay the required application fee, and biennially renew and pay the renewal fee. The Board estimates that there will be no other costs or savings to the regulated community associated with compliance with this regulation.**

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

**There are no costs or savings to local governments associated with compliance with the proposed regulation.**

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

**The Board will process applications for limited licenses and biennial renewals. There are no other costs or savings to state government associated with implementation of the proposed regulation.**

## Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY 04-05	FY+1 05-06	FY+2 06-07	FY+3 07-08	FY+4 08-09	FY+5 09-10
<b>SAVINGS:</b>						
Regulated Community						
Local Government						
State Government						
Total Savings	N/A	N/A	N/A	N/A	N/A	N/A
<b>COSTS:</b>						
Regulated Community	\$17,500	\$19,250	\$1750	\$19,250	\$1750	\$19,250
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Costs	\$17,500	\$19,250	\$1750	\$19,250	\$1750	\$19,250
<b>REVENUE LOSSES:</b>						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

(20a) Explain how the cost estimates listed above were derived.

Because the Board has not previously issued any limited licenses, any estimate of the number of persons who may apply for limited license is very speculative. However, the Board believes that it could reasonably anticipate receiving 500 applications (500 x \$35, or \$17,500) for limited licensure in biennial renewal period 2004-2006, and 100 applications (100 x \$35, or \$3500) in each subsequent renewal period. The Board estimates that approximately 500 holders of limited licenses will renew each biennial period (500 x \$35, or \$17,500).

## Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY-3 (FY 01-02)	FY-2 (FY 02-03)	FY-1 (FY 03-04)	Current FY (FY 04-05)
Pa. State Board of Funeral Dir.	\$506,000	\$550,000	\$609,000	\$627,000

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

**All of the identified costs to be imposed on the regulated community are necessary to defray the costs incurred by the Board to process applications for, and renewals of, limited licenses. The minimal costs associated with compliance with the regulations, compared with its public safety and consumer protection functions, indicate that adoption of the regulations would be prudent.**

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

**Because the proposed regulation implements Act 48, the Board considered no non-regulatory alternatives.**

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

**No alternative regulatory schemes were considered, because no other regulatory schemes would effectuate the amendments to the Funeral Director Law.**

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

**The proposed regulatory amendments do not overlap or conflict with any federal requirements.**

## **Regulatory Analysis Form**

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

**The states of New York and New Jersey permit their licensing authorities to enter into agreements with the licensing authorities of other states to authorize licensees to enter the other state and perform similar limited functions without issuing any limited license. The states of West Virginia, Maryland, and Delaware permit their licensing authorities to issue limited licenses to funeral directors licensed in other states without any agreement with the licensing authorities of those other states. The state of Ohio makes no provision for limited licenses.**

**The proposed regulation will not put Pennsylvania at a competitive disadvantage with these other states. Instead, the proposed regulation will permit Pennsylvania consumers to receive limited services from funeral service providers in other states and will permit Pennsylvania funeral directors to provide similar limited services to consumers in other states.**

**The Board has already entered into limited licensure agreements with New Jersey, Delaware and West Virginia.**

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

**This regulation will have no effect on other regulations of the Board or other state agencies.**

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

**The Board reviews its regulatory proposals at regularly scheduled public meetings, generally the first Wednesday of each month. More information can be found on the Board's web-site ([www.dos.state.pa.us/funeral](http://www.dos.state.pa.us/funeral)), or by calling the Board office at (717) 783-3397.**

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

**The Board will be required to process each application for a limited license and to provide for renewal of each license that is issued. The regulation will change no other record keeping or paperwork requirements.**

## Regulatory Analysis Form

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

**The Board has determined that there are no special needs of any subset of its applicants or licensees for whom special accommodations should be made.**

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

**The regulation will be effective upon publication in final form in the Pennsylvania Bulletin.**

(31) Provide the schedule for continual review of the regulation.

**The Board continually reviews the efficacy of its regulations, as part of its annual review process pursuant to Executive Order 1996-1.**

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
(Pursuant to Commonwealth Documents Law)

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

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State Board of Funeral Directors  
(AGENCY)  
DOCUMENT/FISCAL NOTE NO. 16A-4810

DATE OF ADOPTION: \_\_\_\_\_

\_\_\_\_\_  
DATE OF APPROVALBY: Joseph A. Fluehr, III  
Joseph A. Fluehr, III, FD

TITLE: Chairperson  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

DATE OF APPROVAL  
9.30.04  
EXEC.  
(Deputy General Counsel  
(Chief Counsel  
Independent Agency  
(Strike inapplicable title)

[ ] Check if applicable  
Copy not approved.  
Objections attached.

[ ] Check if applicable.  
No Attorney General approval  
or objection within 30 day  
after submission.

## FINAL RULEMAKING

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE BOARD OF FUNERAL DIRECTORS

49 Pa. Code §§ 13.1, 13.12, 13.77  
Limited License

The State Board of Funeral Directors (Board) hereby amends §§ 13.1 and 13.12 (relating to definitions; and fees) and adds § 13.77 (relating to limited license) to read as set forth in Annex A.

#### Description and Need for Proposed Rulemaking

The act of June 22, 2000 (P.L. 376, No. 48) authorized the Board to enter into an agreement with the appropriate licensing authority of any other state to issue limited licenses to funeral directors licensed in that state, so long as the other state would extend similar privileges to funeral directors licensed in this Commonwealth. Acting under a limited license, an out-of-state funeral director may enter Pennsylvania for the purpose of removing, transporting and burying dead human bodies and directing funerals. A limited license does not authorize the out-of-state funeral director to maintain an establishment or to hold himself out as a funeral director in this Commonwealth. This final-form rulemaking implements limited licensure in Pennsylvania for out-of-state funeral directors.

#### Summary of Comments and Responses to Proposed Rulemaking

The Board published notice of proposed rulemaking at 34 Pa.B. 1961 (April 9, 2004) with a 30-day public comment period. The Board did not receive any comments from the public. The Board received a single comment from the House Professional Licensure Committee (HPLC) as part of its review of proposed rulemaking under the Regulatory Review Act (71 P.S. §§ 745.1-745.12). The Board did not receive comments from the Independent Regulatory Review Commission (IRRC) or the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) as part of their review of proposed rulemaking under the Regulatory Review Act.

Section 9(c) of the Funeral Director Law (63 P.S. § 479.9(c)) requires that any limited license agreement entered into by the Board must include a provision that that “any disciplinary action [taken against the holder of a limited license] shall be reported to the corresponding licensing authority [of the limited license holder’s home state].” Section 13.77(d) of the rulemaking reads that the Board “will” report to the reciprocal state any disciplinary action taken against the holder of a limited license. HPLC commented that because this provision imposes a duty upon the Board, the term “shall” should be used instead of “will.” In drafting this proposed rulemaking, the Board looked to section 6.8(c) of the *Pennsylvania Code and Bulletin Style Manual* of the Legislative Reference Bureau that directs agencies to use “will” when the agency pledges to act and “shall” when anyone else has a duty to act. Through this rulemaking, the Board pledges to take action, in addition to having the existing statutory duty to do so. Therefore, the Board has retained the language as proposed.

#### Fiscal Impact and Paperwork Requirements

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions and will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

### Effective date

The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

### Statutory Authority

The final rulemaking is authorized under sections 9(c) and 16(a) of the Funeral Director Law (63 P.S. §§ 479.9(c) and 479.16(a)).

### Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 30, 2004, the Board submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 1961, to IRRC and the Chairpersons of the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and professional Licensure Committee (SCP/PLC) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on \_\_\_\_\_, 200\_\_\_\_, the final-form rulemaking was approved by the HPLC. On \_\_\_\_\_, 200\_\_\_\_, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on \_\_\_\_\_, 200\_\_\_\_, and approved the final-form rulemaking.

### Additional Information

Persons who require additional information about the final-form rulemaking should submit inquiries to Michelle T. Smey, Administrator, State Board of Funeral Directors, by mail to P. O. Box 2649, Harrisburg, PA 17105-2649, by telephone at (717) 783-3397, or by e-mail at st-funeral@state.pa.us.

### Findings

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.

- (3) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the Funeral Director Law.

Order

The Board, acting under its authorizing statute, orders that:

- (a) The regulations of the Board at 49 Pa. Code Chapter 13 are amended, by amending §§ 13.1 and 13.12 and by adding § 13.77, to read as set forth in Annex A.
- (b) The Board shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as required by law.
- (c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (d) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

Joseph A. Fluehr, III, FD, Chairperson  
State Board of Funeral Directors

## **ANNEX A**

### **PENNSYLVANIA ADMINISTRATIVE CODE**

#### **TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

##### **PART I. DEPARTMENT OF STATE**

##### **SUBPART A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

##### **CHAPTER 13. STATE BOARD OF FUNERAL DIRECTORS**

##### **GENERAL PROVISIONS**

##### **§ 13.1. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

\* \* \*

Limited license – A license issued by the Board that authorizes a person licensed to practice funeral directing in a reciprocal state to practice funeral directing in this Commonwealth in accordance with section 9(c) of the act (63 P.S. § 479.9(c)).

\* \* \*

Reciprocal state – The District of Columbia or a state or territory of the United States of America whose agency that is authorized to license persons to practice the profession of funeral director in that jurisdiction has entered into an agreement with the Board under which persons licensed in that jurisdiction may receive a limited license in this Commonwealth.

\* \* \*

##### **LICENSURE**

\* \* \*

**§ 13.12. Fees.**

Following is the schedule of fees charged by the Board:

<u>Application for limited license.....</u>	<u>\$35</u>
<u>Biennial renewal of limited license.....</u>	<u>\$35</u>

\* \* \*

**LICENSURE OF A FUNERAL DIRECTOR FROM ANOTHER STATE**

**§ 13.77. Limited License.**

- (a) A person licensed by a reciprocal state to practice the profession of funeral director who seeks a limited license shall apply to the Board on a form provided by the Board, including:
- (i) An original certification from the reciprocal state that the applicant is licensed as a funeral director in that jurisdiction and is in good standing.
- (ii) The fee prescribed by § 13.12 (relating to fees).
- (b) A limited license shall be subject to biennial renewal.
- (c) A limited license shall become inactive upon the revocation, suspension, placement upon inactive status, or other lapse of the holder's license in the reciprocal state. Unless a limited license is otherwise suspended or revoked, the Board may reinstate the limited license to active status upon proof that the holder's license in the reciprocal state is no longer revoked, suspended, placed on inactive status, or otherwise lapsed.
- (d) The Board may take disciplinary action against the holder of a limited license for any unprofessional conduct that occurs within this Commonwealth. The Board will report to the reciprocal state any disciplinary action taken against the holder of a limited license.

## FEE REPORT FORM

Agency: State - BPOA

Date: 4/23/2003

Contact: Scott Messing

Phone No. 783-7194

### Fee Title, Rate and Estimated Collections:

Limited License Application Fee: \$35.00

Estimated Biennial Revenue: \$17,500.00 (500 applications x \$35.00) (first cycle only)

Thereafter: Estimated Revenue \$3,500 (100 applications x \$35.00)

### Fee Description:

The fee will be charged to every applicant for a Limited License.

### Fee Objective:

The fee should (1) offset the identifiable costs incurred by the State Board of Funeral Directors to review and process an application for a limited license and (2) defray a portion of the Board's administrative overhead.

### Fee-Related Activities and Costs:

Staff time- process applications	(0.5 hr)	13.99
Administrative Overhead:		<u>19.13</u>
Total Estimated Cost:		\$ 33.12
Proposed Fee:		\$ 35.00

### Analysis, Comment, and Recommendation:

It is recommended that a fee of \$35.00 be established to review an application for a limited license.

**Page 2 Application for Limited License: 4/23/2003**

Staff receives application and attachments, reviews for completeness, contacts applicant to obtain any missing information, verifies status of other state license, enters data into computer, issues license or letter of discrepancy.

## **FEE REPORT FORM**

**Agency:** State - BPOA

**Date:** 4/23/2003

**Contact:** Scott Messing

**Phone No.** 783-7194

### **Fee Title, Rate and Estimated Collections:**

**Biennial Renewal Fee-Limited License:** \$35.00

**Estimate Biennial Revenue:** \$17,500 (500 applications x \$35.00)

### **Fee Description:**

The fee will be charged biennially to applicant for renewal of a limited license.

### **Fee Objective:**

The fee should defray a portion of the general operational costs of the State Board of Funeral Directors

### **Analysis, Comment, and Recommendation:**

It is recommended that a renewal fee of \$35.00 be for renewal of a limited license, thereby causing limited license holders to contribute to the general operational costs of the State Board of Funeral Directors.

§ 33.340(a)(2), § 33.340a(a)(2) or § 33.340b(a)(2) (relating to duties of dentists who are unrestricted permit holders; duties of dentists who are restricted permit I holders; and duties of dentists who are restricted permit II holders)[.] or as follows:

**[(b) *Special inspections.*** In addition to the routine inspections authorized by subsection (a), the Board, through its authorized agents, may conduct a special inspection of a dental office:]

(1) Upon a death or injury related to the administration of general anesthesia, deep sedation, conscious sedation or nitrous oxide/oxygen analgesia in the office.

\* \* \* \* \*

**[(4) As a follow-up to a previous inspection that revealed the office's noncompliance with the equipment and facility requirements prescribed in § 33.340(a)(2).**

**[(c)] (b) *Notice of inspection.*** Prior to the start of [a routine or special] an inspection of a dental office, the Board's authorized agents will advise the dentist whose office is being inspected that the inspection is being made under this section and is limited in scope by this section.

**[(d)] (c) *Access during inspection.*** [For purposes of a routine or special inspection, a] A dentist shall give the Board's authorized agents access to:

(1) Areas of the dental office where general anesthesia, deep sedation, conscious sedation or nitrous oxide/oxygen analgesia are administered.

(2) Equipment, supplies, records and documents relating to the administration of general anesthesia, deep sedation, conscious sedation or nitrous oxide/oxygen analgesia.

\* \* \* \* \*

**[(e)] (d) *Guideline for inspection.*** [A routine] An inspection will be conducted under provisions pertaining to office facilities and equipment in [the American Association of Oral and Maxillofacial Surgeons' *Office Anesthesia Evaluation Manual*] § 33.340(a)(2), § 33.340a(a)(2), § 33.340b(a)(2) or § 33.341(2).

**[(f)] (e) *Inspection showing noncompliance.*** If [a routine or special] an inspection reveals that a dental office is not in compliance with the equipment and facility requirements prescribed in § 33.340(a)(2), § 33.340a(a)(2), § 33.340b(a)(2) or § 33.341(2), the Board will give the dentist whose office was inspected written notice of the deficiencies and of the deadline for correcting the deficiencies. A reinspection shall take place within 30 days, and, if noncompliance is still shown, formal administrative charges may be initiated.

[Pa.B. Doc. No. 04-607. Filed for public inspection April 9, 2004, 9:00 a.m.]

## STATE BOARD OF FUNERAL DIRECTORS

[49 PA. CODE CH. 13]

### Limited License

The State Board of Funeral Directors (Board) proposes to amend §§ 13.1 and 13.12 (relating to definitions; and fees) and to add § 13.77 (relating to limited license) to read as set forth in Annex A.

#### *Effective date*

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

#### *Statutory Authority*

The proposed rulemaking is authorized under sections 9(c) and 16(a) of the Funeral Director Law (act) (63 P. S. §§ 479.9(c) and 479.16(a)).

#### *Background and Need for the Amendment*

Section 2 of the act (63 P. S. § 479.2) defines the term "funeral director" to include any person who supervises the burial, transportation or disposal of deceased human bodies. A person who engages in that activity is practicing the profession of funeral director. However, no one may practice as a funeral director in this Commonwealth without being licensed to do so by the Board under section 13(a) of the act (63 P. S. § 479.13(a)). Accordingly, a person who is not licensed as a funeral director by the Board, even if licensed as a funeral director by another jurisdiction, cannot remove a deceased human body, transport a body or conduct a burial in this Commonwealth. This restriction led many out-of-State licensed funeral directors who practice near the State line to obtain licensure in this Commonwealth, in addition to the home state. However, licensure in multiple jurisdictions generally would not be feasible for a funeral director who does not intend to practice regularly across the State line.

New York and New Jersey authorize their respective licensing authorities to enter into agreements that permit a funeral director licensed in the other state to enter into the state to make a removal, transport a body or conduct a burial without being licensed in the state. West Virginia, Maryland and Delaware permit a funeral director, licensed in another state to obtain licensure to enter into the state and make a removal, transport a body or conduct a burial without any agreement between the licensing authorities of those states. In each of these states, a funeral director must be fully licensed by that state to open an establishment.

The act of June 22, 2000 (P. L. 376, No. 48) authorized the Board to enter into an agreement with the appropriate licensing authority of any other state to issue limited licenses to funeral directors licensed in that state who wish to practice on a limited basis in this Commonwealth. A limited license would authorize a funeral director from another state to enter into this Commonwealth for the purpose of removing, transporting and burying dead human bodies and directing funerals. A limited license would not authorize the out-of-State funeral director to maintain an establishment or to hold himself out as a funeral director in this Commonwealth.

#### *Description of the Proposed Rulemaking*

Under the proposed rulemaking, a funeral director licensed in a jurisdiction with which the Board has entered into an agreement must submit an application for

a limited license, including an original certification of good standing from the applicant's home jurisdiction, and the required fee. It is anticipated that the application will include an affidavit by which the applicant would acknowledge the restrictions on practice under a limited license, that the applicant is familiar with and will comply with the act and the Board's regulations and that any unprofessional conduct in this Commonwealth may result in disciplinary action that would be reported to the applicant's home state.

A limited license will be subject to biennial renewal. Because section 10(b) of the act (63 P. S. § 479.10(b)) requires each licensed individual to successfully complete continuing education as a condition for renewal, a holder of a limited license will be required to complete the required amount continuing education. However, because the holder of a limited license is by definition licensed in another jurisdiction, continuing education successfully completed in another jurisdiction will satisfy this requirement for the holder of a limited license. A limited license will become inactive if the holder's funeral director license in the funeral director's home state is revoked, suspended, inactivated or otherwise lapsed. The Board will reinstate the limited license to active status upon proof that the holder's license in the home state has been reinstated, unless the Board has, by disciplinary action, suspended or revoked the limited license. Additionally, the proposed rulemaking sets forth the requirement of section 9(c) of the act that the Board may take disciplinary action against the holder of a limited license for unprofessional conduct in this Commonwealth and will report that disciplinary action to the limited license holder's home state.

Finally, the proposed rulemaking will set fees for a limited license. Fees for service are to be set to enable the Board to recover the cost of providing the service. The application fee will be \$35. In general, renewal fees are set at an amount, together with other fees, sufficient to fund the operations of a licensing board and to spread that cost out over all licensees. For limited licensure, however, this approach would disregard the limited use of the license by the out-of-State holders. Also, because there is no history of limited licensure, the Board cannot determine what costs may be attributable to holders of limited licenses. Accordingly, the Board will set the renewal fee for a limited license at \$35, the same amount as the application fee.

#### *Fiscal Impact and Paperwork Requirements*

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no additional paperwork requirements upon the Commonwealth, its political subdivisions or the private sector.

#### *Sunset Date*

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 30, 2004, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

#### *Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Michelle Smey, Administrative Officer, State Board of Funeral Directors, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-4810 (Limited license) when submitting comments.

JOSEPH A. FLUEHR, III, FD,  
*Chairperson*

**Fiscal Note:** 16A-4810. No fiscal impact; (8) recommends adoption.

#### **Annex A**

### **TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

#### **PART I. DEPARTMENT OF STATE**

#### **Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

#### **CHAPTER 13. STATE BOARD OF FUNERAL DIRECTORS**

#### **GENERAL PROVISIONS**

##### **§ 13.1. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

**Limited license**—A license issued by the Board that authorizes a person licensed to practice funeral directing in a reciprocal state to practice funeral directing in this Commonwealth in accordance with section 9(c) of the act (63 P. S. § 479.9(c)).

\* \* \* \* \*

**Reciprocal state**—The District of Columbia or a state or territory of the United States of America whose agency that is authorized to license persons to practice the profession of funeral director in that jurisdiction has entered into an agreement with the Board under which persons licensed in that jurisdiction may receive a limited license in this Commonwealth.

\* \* \* \* \*

#### **LICENSURE**

##### **§ 13.12. Fees.**

Following is the schedule of fees charged by the Board:

\* \* \* \* \*

Application for limited license ..... \$35

Biennial renewal of limited license ..... \$35

## LICENSURE OF A FUNERAL DIRECTOR FROM ANOTHER STATE

### § 13.77. Limited license.

(a) A person licensed by a reciprocal state to practice the profession of funeral director who seeks a limited license shall apply to the Board on a form provided by the Board, including:

(i) An original certification from the reciprocal state that the applicant is licensed as a funeral director in that jurisdiction and is in good standing.

(ii) The fee prescribed by § 13.12 (relating to fees).

(b) A limited license shall be subject to biennial renewal.

(c) A limited license shall become inactive upon the revocation, suspension, placement upon inactive status, or other lapse of the holder's license in the reciprocal state. Unless a limited license is otherwise suspended or revoked, the Board may reinstate the limited license to active status upon proof that the holder's license in the reciprocal state is no longer revoked, suspended, placed on inactive status, or otherwise lapsed.

(d) The Board may take disciplinary action against the holder of a limited license for any unprofessional conduct that occurs within this Commonwealth. The Board will report to the reciprocal state any disciplinary action taken against the holder of a limited license.

[Pa.B. Doc. No. 04-608. Filed for public inspection April 9, 2004, 9:00 a.m.]

## STATE BOARD OF MEDICINE

[49 PA. CODE CH. 16]

### Disciplinary Process and Procedure

The State Board of Medicine (Board) proposes to amend § 16.51 (relating to creation of list of hearing examiners) and add §§ 16.55—16.58 to read as set forth in Annex A.

#### A. Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

#### B. Statutory Authority

Sections 8 and 9 of the Medical Practice Act of 1985 (act) (63 P.S. §§ 422.8 and 422.9) authorize the Board to promulgate regulations addressing procedures to be followed in proceedings before it consistent with the requirements of section 9 of the act.

#### C. Background and Purpose

The proposed rulemaking will codify the process and procedures that are currently followed in disciplinary matters before the Board. These procedures are derived from sections 901—905 of the Health Care Services Malpractice Act (formerly 40 P.S. §§ 1301.901—1301.905). On March 20, 2002, the Governor signed into law the Medical Care Availability and Reduction of Error Act (MCARE Act) (40 P.S. §§ 1303.101—1303.910). Section 5104 of the MCARE Act (40 P.S. § 1303.) repealed 40 P.S. §§ 1301.901—1301.905. It is not clear what, if any, impact the repealer provisions have on the procedures followed by the Board. Because the Board's proce-

dures have been effective, the Board has determined that codifying the process will maintain the status quo and avoid unnecessary and unintended confusion.

#### D. Description of the Proposed Rulemaking

Section 16.51 is amended to more accurately reflect that, consistent with the Commonwealth Attorneys Act (71 P.S. §§ 732-101—732-506), attorneys, including hearing examiners, are assigned to agencies through the Office of General Counsel. The proposed rulemaking also provides for the Board's current process that, absent an order of the Board otherwise, all matters would be heard by the Board's hearing examiner.

Section 16.55 (relating to complaint process) is added to provide a description of the complaint process. Section 16.55(a) provides that a written complaint may be submitted to the complaints office. Section 16.55(b)—(d) describes the internal processing of complaints. Specifically, in keeping with the decision in *Lyness v. State Board of Medicine*, 605 A.2d 1204 (Pa. 1992), the Board prosecutor will cause to be conducted reasonable inquiry and will determine whether to initiate the filing of formal charges. Consistent with section 907 of the MCARE Act (40 P.S. § 1303.907), § 16.55(c) reiterates that documents, materials or information obtained during the course of an investigation shall be confidential and privileged unless admitted as evidence during the course of a formal disciplinary proceeding. Section 16.55(d) provides for the Board prosecutor to enter negotiations to settle the case by consent agreement.

Section 16.56 (relating to formal hearings open to public) provides for formal hearings to be open to the public.

Section 16.57 (relating to appeal from the hearing examiner's decision) provides for review of the hearing examiner's decision by the Board on the request of either party or on the Board's own motion. Section 16.57(b) provides that, unless otherwise ordered by the Board, neither the filing of an application for review nor the Board's own notice of intent to review would stay the hearing examiner's decision.

Section 16.58 (relating to appeal from the Board decision) provides for review of the Board's decision under 2 Pa.C.S. § 702 (relating to appeals).

#### E. Fiscal Impact and Paperwork Requirements

There is no adverse fiscal impact or paperwork requirement imposed on the Commonwealth, political subdivisions or the private sector.

#### F. Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

#### G. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 30, 2004, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory

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*House of Representatives*  
COMMONWEALTH OF PENNSYLVANIA  
HARRISBURG

CHAIRMAN  
PROFESSIONAL LICENSURE COMMITTEE

May 11, 2004

John R. McGinley, Jr., Chairman  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor, Harrisstown 2  
333 Market Street  
Harrisburg, PA 17101

Dear Chairman McGinley:

The Professional Licensure Committee held a meeting on May 11, 2004, to consider the following:

Regulation 16A-4810 – Proposed rulemaking of the State Board of Funeral Directors pertaining to limited license. The committee voted to take no formal action until the final regulation is promulgated. The committee submits the following comment:

1. The committee notes a drafting error in Section 13.77(d). The proposed regulation states that "The Board will report to the reciprocal state any disciplinary action..." The committee notes that this provision imposes a duty on the board and therefore recommends the word "shall" be substituted for the word "will."

Regulation 16A-418 – Proposed rulemaking of the State Architects Licensure Board pertaining to a definition and fees. The committee voted to take no formal action until the final regulation is promulgated.

Regulation 16A-4918 – Proposed rulemaking of the State Board of Medicine pertaining to disciplinary process and procedure. The committee voted to take no formal action until the final regulation is promulgated. The committee submits the following comments:

1. The committee notes that 2 PaCS 702 states that, "Any person aggrieved by an adjudication of a Commonwealth agency who has a direct interest in such adjudication shall have the right to appeal therefrom to the court vested with jurisdiction of such appeals pursuant to Title 42 (relating to judiciary and judicial procedure)," which is an absolute right. The committee notes the right of appeal as set forth in Article V Section 9 of the Pennsylvania Constitution is an absolute right ("There shall be a right of appeal in all cases to a court of record from a court not of record; and there shall also be a right of appeal from a court of record or from an administrative agency to a court of record or to an appellate court, the selection of such as be provided by law..."). Consequently, the committee is concerned that the language found in Section 16.58 of the proposed regulation is too limiting and narrow in its scope. Specifically, the

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HARRISBURG

CHAIRMAN  
PROFESSIONAL LICENSURE COMMITTEE

Page 2

Mr. McKinley – May 11, 2004

committee recommends that the board place a period after the words "Commonwealth Court" or delete the phrase, "if the appeal is based on allegations of certain errors of law under terms and conditions as cover appeals and actions involving State agencies..."

2. The committee recommends that a definition of "public officer" be provided. The term is found in Section 16.55.
3. The committee recommends that the word "motion" be used in proposed Section 16.57, instead of the word "notice." The word "motion" may be more appropriate in the context of the board reviewing a decision of a hearing examiner sua sponte.

Regulation 16A-4614 – Proposed rulemaking of the State Board of Dentistry pertaining to administration of general anesthesia, deep sedation, conscious sedation and nitrous oxide/oxygen analgesia. The committee voted to take no formal action until the final regulation is promulgated. The committee submits the following comments:

1. The committee notes that Chapter 33 contains regulations related to volunteer licenses and the administration of anesthesia. 49 Pa.Code 33.110. The committee seeks clarification that the regulations regarding volunteer licensees comply with the proposed regulations and Act 135 of 2002. As an example, the committee notes that the regulations related to volunteer licensees do not speak to "deep sedation" as a separate category of anesthesia.
2. The committee notes that Act 135 of 2002 imposes certain deadlines on the board. One such deadline is April 1, 2004, regarding the important safety issues of clinical evaluations and office inspections. Specifically, Act 135 of 2002 requires that as of April 1, 2004, all initial applications for permits and initial applications for renewal of permits include office inspection and clinical evaluation.

Act 135 of 2002 was signed into law on November 25, 2002. The committee notes with concern that the proposed regulation was delivered to the committee on March 31, 2004, one day before the statutorily imposed deadline. The committee further notes its concern that, as a consequence, the statutorily imposed deadline concerning these safety measures cannot be implemented as the law directs.

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HARRISBURG

CHAIRMAN  
PROFESSIONAL LICENSURE COMMITTEE

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Mr. McKinley – May 11, 2004

Further, the committee requests information from the board as to whether or not the board has provided any notice or any type of information to licensees regarding the office inspections and clinical evaluations.

3. The committee notes the reduction of hours of continuing education for permit holders and seeks the board's rationale for this reduction.
4. The committee notes the requirement contained in Act 135 of 2002 that assistants be certified in CPR. The committee seeks clarification that Basic Life Support includes CPR.
5. The committee notes that Act 135 of 2002 permits the board to contract with dental schools, organizations, and individuals in order to perform office inspections and clinical evaluations per Section 11.2(b)(1) of the Dental Law. The committee notes the board is seeking to implement this provision through Section 33.336b of the proposed regulation, which does not mention contracting with any of these entities. Further, the committee has been advised that the board will not contract with these entities. The committee seeks information regarding the board's decision.
6. The committee requests an explanation from the board as to why the board has not explored the possibilities listed in Section 11.2(b)(1) of Dental Law with respect to who may conduct the office inspections and clinical evaluations.
7. The committee notes that under Act 135 of 2002, specifically Section 11.2 (b)(5), a non-permit holder must not allow sedation to be administered in his office unless he can certify that the equipment used is in compliance with the safety measures adopted in the act. The committee also notes that Section 33.341(a)(5) of the proposed regulation allows the non-permit holder to verify with the permit holder that the equipment meets the statutory standards regarding safety. The committee seeks clarification regarding the way in which verification will be obtained and recommends the proposed regulation require written verification.
8. The committee notes that Act 135 of 2002 requires dentists to maintain records of the physical evaluation, as well as records of the medical history and type of anesthesia utilized. The committee notes the proposed regulation is silent with respect to this statutory requirement.

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PROFESSIONAL LICENSURE COMMITTEE

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Mr. McKinley – May 11, 2004

Further, the committee notes that peer evaluation organizations which perform office inspections and clinical evaluations are not required to maintain records of these events. The committee recommends that a requirement regarding maintaining these records be included in the regulation.

9. The committee recommends that the addresses of organizations listed in Section 33.331 be deleted as those addresses are subject to change.

Regulation 16A-606 – Final rulemaking of the State Board of Vehicle Manufacturers, Dealers and Salespersons relating to emergency vehicles. The committee voted to approve the regulation.

Regulation 16A-426 – Final rulemaking of the State Board of Barber Examiners related to ten chair schools. The committee voted to approve the regulation.

Please feel free to contact my office should any questions arise.

Sincerely,

A handwritten signature in black ink that reads "Thomas P. Gannon".

Thomas P. Gannon  
Chairman  
Professional Licensure Committee

cc: Hon. Pedro A. Cortes, Secretary of the Commonwealth  
Department of State  
Joseph A. Fluehr, III, FD, Chairman, PA State Board of Funeral Directors  
Ann Shepard Houston, RA, President, PA State Architects Licensure Board  
Charles D. Hummer, Jr., M.D., PA State Board of Medicine  
Veasey B. Cullen, Jr., D.M.D., Chairman, PA State Board of Dentistry  
Edward J. Cernic, Jr., Chairman, State Board of Vehicle Manufacturers  
Lee Cameroni, Chairperson, State Board of Barber Examiners



JOHN R. MCGINLEY, JR., ESQ., CHAIRMAN  
ALVIN C. BUSH, VICE CHAIRMAN  
DANIEL F. CLARK, ESQ.  
ARTHUR COCCODRILLI  
MURRAY UFBERG, ESQ.  
ROBERT E. NYCE, EXECUTIVE DIRECTOR  
MARY S. WYATTE, CHIEF COUNSEL

**INDEPENDENT REGULATORY REVIEW COMMISSION  
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June 9, 2004

Joseph A. Fluehr, III, Chairman  
State Board of Funeral Directors  
2601 North 3rd Street  
Harrisburg, PA 17110

Re: Regulation #16A-4810 (IRRC #2397)  
State Board of Funeral Directors  
Limited License

Dear Chairman Fluehr:

The Independent Regulatory Review Commission has reviewed your proposed regulation. We have no objections, comments, or recommendations to offer on this regulation. If you deliver the final-form regulation without revisions, and the committees do not take any action, it will be deemed approved.

Sincerely,

Robert E. Nyce  
Executive Director  
sfh

cc: Honorable Robert M. Tomlinson, Chairman, Senate Consumer Protection and Professional  
Licensure Committee  
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional  
Licensure Committee  
Honorable Thomas P. Gannon, Majority Chairman, House Professional Licensure Committee  
Honorable William W. Rieger, Democratic Chairman, House Professional Licensure Committee  
Honorable Pedro A. Cortes, Secretary, Department of State

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE

**DATE:**

**SUBJECT: Final Rulemaking:  
State Board of Funeral Directors  
Limited license (16A-4810)**

**TO: David J. Devries, Executive Deputy General Counsel  
Office of General Counsel**

**FROM: Thomas A. Blackburn, Counsel** *TAB*  
**State Board of Funeral Directors**

Other than as set forth in the Preamble, there are no significant legal and policy issues presented by this rulemaking for the State Board of Funeral Directors regulations concerning limited license. The rulemaking implements Act 48 of 2000, providing for limited license.

I certify that I have reviewed this regulation for form and legality, that I have discussed any legal and policy issues with the administrative officers responsible for the program, and that all information contained in the Preamble and Annex is correct and accurate.

**TAB**



**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE BOARD OF FUNERAL DIRECTORS**

**Post Office Box 2649  
Harrisburg, Pennsylvania 17105-2649  
(717) 783-3397**

**November 5, 2004**

The Honorable John R. McGinley, Jr., Chairman  
INDEPENDENT REGULATORY REVIEW COMMISSION  
14<sup>th</sup> Floor, Harristown 2, 333 Market Street  
Harrisburg, Pennsylvania 17101

Re: Final Regulation  
State Board of Funeral Directors  
16A-4810: Limited License

Dear Chairman McGinley:

Enclosed is a copy of a final rulemaking package of the State Board of Funeral Directors pertaining to limited license (16A-4810).

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

A handwritten signature in black ink, reading "Joseph A. Fluehr, III".

Joseph A. Fluehr, III, FD Chairman  
State Board of Funeral Directors

JAF/TAB:law

Enclosure

cc: Linda C. Barrett, Chief Counsel  
Department of State  
Basil L. Merenda, Commissioner  
Bureau of Professional and Occupational Affairs  
Joyce McKeever, Deputy Chief Counsel  
Department of State  
Cynthia Montgomery, Regulatory Counsel  
Department of State  
Herbert Abramson, Senior Counsel in Charge  
Department of State  
Thomas A. Blackburn, Counsel  
State Board of Funeral Directors  
State Board of Funeral Directors

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

I.D. NUMBER: 16A-4810  
SUBJECT: State Board of Funeral Directors - Limited License  
AGENCY: DEPARTMENT OF STATE

**TYPE OF REGULATION**

Proposed Regulation  
X Final Regulation  
Final Regulation with Notice of Proposed Rulemaking Omitted  
120-day Emergency Certification of the Attorney General  
120-day Emergency Certification of the Governor  
Delivery of Tolled Regulation  
a. With Revisions b. Without Revisions

RECEIVED  
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REVIEW COMMISSION

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
11/4/04	<i>Sandra J. Hayer</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
11/5/04	<i>Mary Walmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
11/5/04	<i>Steph F. Hayer</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)